



**International Covenant on
Civil and Political Rights**

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Human Rights Committee

**Sixth periodic report submitted by Belgium under
article 40 of the Covenant pursuant to the optional
reporting procedure, due in 2017^{*, **}**

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* The present document is being issued without formal editing.

** The annexes and endnotes to the present document are on file with the secretariat and are available for consultation. They are also available on the Committee's website.



I. Introduction

1. This report is submitted under article 40 of the International Covenant on Civil and Political Rights, which was ratified by Belgium on 21 April 1983.¹ It was prepared in accordance with the new optional reporting procedure adopted by the Human Rights Committee in October 2009, which was accepted by Belgium on 28 November 2014.

2. The report describes new policies and changes in legislation, regulations, jurisprudence and administrative practices that relate to the substantive articles of the Covenant and that have been adopted since the fifth periodic report of Belgium in 2009 (CCPR/C/BEL/5), its replies in 2010 prior to reporting (CCPR/C/BEL/Q/5/Add.1) and its interim follow-up to the Committee's concluding observations (CCPR/C/BEL/CO/5) in November 2011 (CCPR/C/BEL/CO/5/Add.1) and July 2012 (CCPR/C/BEL/CO/5/Add.2), and up to 1 January 2018. The new measures adopted since that date will be discussed during the oral introduction of the report. For general information on Belgium, please refer to the common core document (see annex).

3. For the purposes of preparing this report, a meeting was held on 5 July 2018 between representatives of the Belgian authorities (Foreign Affairs, Justice, Police, Home Affairs, Institute for the Equality of Women and Men, Defence), civil society (Amnesty International, Belgian Disability Forum) and Unia, the Centre for Equal Opportunities and Action to Combat Racism.

II. General information on the national human rights situation, including new measures and developments relating to the implementation of the Covenant

Replies to the issues raised in paragraph 1

4. At the time they were received, the Committee's concluding observations were forwarded to all relevant authorities and ministers. More recently, consultations have been organized with civil society representatives. Following the submission of numerous reports by Belgium in one year (Committee against Torture, Committee on Economic, Social and Cultural Rights, Committee on the Elimination of Racial Discrimination, Committee on the Rights of Persons with Disabilities and Committee on the Elimination of Discrimination against Women), a meeting with civil society representatives was held in April 2015, during which the concluding observations of these committees were discussed. In the longer term, there are plans to meet more regularly with representatives of civil society to discuss the follow-up to be given to recommendations (by the United Nations and Council of Europe) on the basis of a table with all recommendations organized thematically.

5. No specific procedures are in place for giving effect to the Committee's Views under the Optional Protocol. Since communication No. 1472/2006, there have been no further decisions requiring action on the part of Belgium. Where follow-up to the Committee's Views is required, it will depend on the nature of the Covenant violation(s) and issue(s) in question and will result in the adoption of individual and/or general measures by the competent authorities, as is the case for compliance with the judgments of the European Court of Human Rights. As to the measures taken to ensure full compliance with the Views adopted in the *Nabil Sayadi and Patricia Vinck* communication, it should be recalled that, as a result of intense and repeated lobbying by Belgium of the relevant sanctions committee of the United Nations Security Council, the names of these persons were removed from the list on 21 July 2009, thereby enabling their accounts and assets to be unfrozen.

Replies to the issues raised in paragraph 2

6. With regard to other significant developments in the legal and institutional framework for the promotion and protection of human rights since 2010 (concluding

observations of the Committee), the Belgian State refers the Committee to its common core document.

7. On the subject of the applicability of the Covenant in the domestic legal system, it is important to note that, in Belgium, it is the courts which decide, with full independence, whether or not the provisions of international treaties are directly applicable, based on their assessment as to whether the necessary conditions for doing so² have been met. Notwithstanding, in legal proceedings, litigants and lawyers most often invoke national and/or regional provisions, such as those of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), which embody rights that are the same or very similar to those set forth in the Covenant. Thus, even in those instances in which the provisions of the Covenant are invoked before the Belgian courts, it is most often on a secondary or ancillary basis, and they are considered on that same basis. Included in the annex are examples of decisions that make reference to the Covenant.

III. Specific information on the implementation of articles 1 to 27 of the Covenant, including with regard to the Committee's previous recommendations

Constitutional and legal framework within which the Covenant is implemented (art. 2)

Replies to the issues raised in paragraph 3

8. Further to the Committee's concluding observations and the first universal periodic review of Belgium in 2011, the reservations and interpretative statements formulated by Belgium in respect of human rights treaties, in particular the Covenant, were examined in the light of developments in Belgium. It was concluded that they remain justified and that, even though they are often aimed at clarifying the state of the law, they do not pose an obstacle to complying with or giving effect to these treaties.³

Replies to the issues raised in paragraph 4

9. In its most recent Coalition Agreement of October 2014, and during its second universal periodic review, Belgium reiterated its intention to work actively to establish an independent national human rights institution in line with the Paris Principles.⁴ Under the previous term of legislature, a first step was completed by granting inter-federal status to the Centre for Equal Opportunities and Action to Combat Racism (Unia) and establishing the Belgian Federal Migration Centre (Myria), both of which have been in operation since March 2014 under their new format. In 2015, the Minister of Justice and the Secretary of State for Equality of Opportunity (jointly responsible for this project) held consultations with several inter-federal and federal bodies that are already performing some of the activities of a national human rights institution.⁵ The idea is to coordinate the existing bodies and to incorporate the activities not yet being performed into a coherent whole. A briefing/consultation session with representatives of civil society organizations was held in June 2015. Given the complexity of the project, the goal is to complete the components critical to the establishment of the institution by the end of the current term of legislature (June 2019). Once the project is finalized at the federal level, another consultation session will be organized with civil society.

10. In the exercise of their respective functions, all Belgian authorities must give effect to and promote the human rights enshrined in the international instruments ratified by Belgium and in the Belgian Constitution and Belgian laws. Belgium does not have a national action plan on human rights, given that it takes a more sectoral approach to the promotion and protection of human rights. Consequently, several action plans have been developed on various issues, at the level of the federated entities⁶ or at the national level,⁷ that provide for specific coordination in these areas, which are regarded as priorities. For example, at the beginning of each term of legislature, the Government of Flanders develops

four horizontal action plans relating to equality of opportunity,⁸ the integration policy,⁹ the youth and children's rights policy and the elimination of poverty.

Counter-terrorism measures (arts. 2, 7, 9, 10, 14 and 17)

Replies to the issues raised in paragraph 5

11. Counter-terrorism and its impact on human rights were described in detail in the report submitted to the Committee against Torture in July 2012.¹⁰ Only subsequent developments are included here. It is important to recall that, with very few exceptions, terrorist offences remain subject to ordinary criminal procedural law (arrest, detention, interrogation, due process, sentencing and appeal) and that the law provides human rights safeguards in order to prevent abuse.¹¹ Respect for human rights is also guaranteed by the balance of powers that exists between the legislative, executive and judicial branches, as illustrated, for example, by the fact that, in March 2018,¹² the Constitutional Court repealed article 2 (3) of the Act of 3 August 2016 containing various provisions relating to counter-terrorism.

12. Belgium continues to fight radicalism and terrorism with firmness and determination in accordance with its international human rights commitments. Further to this effort, it recently adopted a comprehensive approach that includes preventive and repressive measures, which are described in detail in annex 3. In 2005, Belgium became one of the first countries to launch an action plan against radicalism, which it revised in 2015. Its comprehensive and integrated approach focuses on collaboration between stakeholders,¹³ improving information exchanges and combining administrative and judicial approaches.¹⁴

13. Respect for human rights is not a given; it remains a daily challenge that requires maintaining a level of proportionality between the means employed and the objective of social order, which is at the heart of our discussions when carrying out legislative amendments intended to combat terrorism. These amendments are described below.

14. The expansion of the list of offences that entail the use of special investigation methods does not affect the conditions for challenging them or their monitoring, which were described in the above-mentioned report to the Committee against Torture.

15. Enlarging the possibilities for the use of deprivation of nationality in respect of all terrorist offences¹⁵ and eliminating the maximum period of 10 years between the acquisition of nationality and the date of the commission of the offence¹⁶ do not restrict any of the existing safeguards. Loss of nationality may be ordered only by a criminal court judge in cases in which a non-suspended prison sentence of at least 5 years is handed down. This order may be challenged through the common remedies at law. Deprivation of nationality may be imposed only against a Belgian national born to non-Belgian parents, provided that he or she was born on Belgian territory no more than five years after the arrival of his or her parents in Belgian territory. This measure is not applicable if it renders the person stateless.

16. With regard to the temporary withdrawal of an identity card¹⁷ or the denial or withdrawal of a passport in cases where a person poses a risk to public order and security,¹⁸ the purpose of the procedure used is to temporarily deny or invalidate the identity card of radicalized Belgians (25 days, extendable to 3 months or to 6 months in exceptional circumstances) and to replace it with a permit allowing such persons free movement only within Belgium. Such a decision of withdrawal, invalidation or denial can be taken only on the basis of a reasoned opinion in writing from the Coordination Agency for Threat Analysis. This procedure entails an obligation by the Federal Public Service for Foreign Affairs also to withdraw the individual's passport and travel documents.

17. One of the main objectives of measures aimed at improving information exchanges is to better combine the administrative and judicial approaches in order to recognize terrorism as both a terrorist offence and a security risk. This challenge is addressed most notably in the Foreign Terrorist Fighters circular of 21 August 2015,¹⁹ the Act of 27 April 2016,²⁰ which created the legal basis for shared databanks, and the Royal Decree of 21 July 2016.²¹ Provision has been made for the Supervisory Body for Police Information

Management and the Belgian Standing Intelligence Agencies Review Committee to oversee the use of the personal information and data contained in these databanks. Moreover, under article 13 of the Act of 8 December 1992,²² any individual concerned by an input in a shared databank may contact the Commission for the Protection of Privacy in order to exercise his or her rights to information, access and correction.

18. Lastly, thanks to the adoption of the Act of 5 February 2016,²³ which provides for the establishment of a permanent channel of communication with a view to combating terrorism, terrorism financing and potentially related money-laundering activities, the Belgian Financial Intelligence Processing Unit now communicates more closely with the Coordination Agency for Threat Analysis, the State Security Service and the General Intelligence and Security Service.

19. The Action Plan against Radicalism of March 2015²⁴ is intended to combat radicalization in prisons through two main objectives: preventing the radicalization of prisoners and developing a special type of supervision. The focus is therefore on “disengagement”.²⁵

20. To achieve these objectives, the prison administration is taking a two-track approach:

- Managing prisoners known as “*terros*”²⁶ according to the concept of normalization; to the extent feasible, these prisoners are distributed among all the prisons in the country in order to accommodate them in those facilities in as normal a manner as possible
- The containment of recruiters and hate preachers who pose a major risk of radicalizing other prisoners, which involves grouping them together, as far as possible, in specialized sections. To this end, two sections were created at Hasselt and Ittre

21. Together with these efforts, the administration has invested considerable resources in training and awareness-raising for prison staff (management, psychosocial services, custodial staff), and in the routine involvement of representatives of religious communities. Moreover, a mechanism for the exchange of information between the prison administrations (central administration and prisons) and the security services has been established, including by means of the computerization of data inflows. A second information flow towards the justice centres (*maisons de justice*) has also been set up.

22. Lastly, cooperation with the federated entities has been strengthened. A project to identify prisoners who meet the criteria for participating in the programmes offered by the federated entities (which have competence over these matters) has been launched.

23. The Act of 25 December 2016²⁷ on special investigative methods and methods of investigation related to the Internet and electronic communications is aimed, inter alia, at adapting the Code of Criminal Procedure to technological developments. The Act of 30 March 2017 amending the Organic Act on the intelligence and security services pursues the same aim with regard to the collection of intelligence data.²⁸

24. The Act of 3 August 2016²⁹ relaxes the criteria for the use of pretrial detention in terrorism cases in that it prescribes the same conditions for the majority of terrorist offences punishable by more than 5 years of prison as for offences punishable by more than 15 years.³⁰ The use of pretrial detention is therefore possible when absolutely necessary for public security, without it being required to meet any of the other conditions for such detention.³¹

25. The purpose of the circular of 18 July 2016 against hate preachers³² is to facilitate the expulsion or ban from Belgian territory of hate preachers, in particular by providing for coordination between the various federal public services (Home Affairs, Foreign Affairs, etc.). The Coordination Agency for Threat Analysis centralizes the collected information, and it is only on the basis of its validation and reasoned arguments that the relevant services are authorized to take such measures.

26. For night-time police raids in cases relating to terrorism, the aforementioned Act of 27 April 2016³³ provides for the amendment of article 2 of the Act of 7 June 1969 on the time period during which house raids or searches are proscribed. As a result, the prohibition

to carry out an arrest in a place not open to the public before 5 a.m. or after 9 p.m. does not apply in the case of a terrorist offence or in certain circumstances when there are serious reasons to believe that firearms, explosives, or nuclear, biological or chemical weapons, or noxious or hazardous substances that may put human lives at risk in the event of a leak, will be discovered.

27. In addition, a draft agreement is in the process of being negotiated with the International Committee of the Red Cross (ICRC) so as to enable its representatives to visit detainees who are suspected of terrorism or have been convicted on terrorism charges. The agreement provides that Belgium will forward data corresponding to the detainees to ICRC and allow ICRC representatives to meet with detainees in the facilities where they are being held, gather their comments and forward these to ICRC headquarters.

28. In May 2018, the United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism visited Belgium.

Non-discrimination and the rights of persons belonging to ethnic, religious, linguistic or sexual minorities (arts. 2, 20, 22 and 24–27)

Replies to the issues raised in paragraph 6

29. At the various levels of government, many measures (both preventive and punitive) have been taken to combat racially or religiously motivated offences against members of the Jewish, Muslim and Roma³⁴ communities, Travellers and persons of foreign origin.

30. At the federal level, one of the main instruments along these lines is a joint circular from the Ministers of Justice and Home Affairs and the Belgian College of Prosecutors General, No. COL 13/2013³⁵ (drafted in conjunction with Unia), whose aim is to standardize the policy on identifying and prosecuting Holocaust denial, discrimination and hate crimes.³⁶

31. The main objectives of circular No. COL 13/2013 are as follows: to identify and register the offences more efficiently; to raise awareness among the actors involved (especially prosecutors, police officers and the relevant social inspection services); to provide more effective guidance to prosecutors and police officers in the field for investigating and prosecuting these offences; to improve communication and cooperation among themselves and, in particular, with Unia and the Institute for the Equality of Women and Men. The circular provides for the organization of a network of actors who are charged, inter alia, with evaluating its day-to-day implementation. It is composed of the following: a prosecutor coordinator for the country; lead prosecutors in all public prosecution services and public prosecution services attached to labour courts; and lead police officers in each local police district or unit. According to circular No. COL 13/2013, police officers must draw up an official report of each complaint of discrimination and/or of a hate crime, even if they believe a priori that it does not constitute an offence. The report must provide possible evidence of motive. A decision to take no action for the purposes of expediency, without at least a reminder of the relevant law, should be avoided. This differs from the procedure for other matters, thereby demonstrating the importance attached to combating discrimination. The circular places particular importance on legislative training for the actors involved: regular training is imparted to lead prosecutors and lead police officers.

32. At the federal level, an interim evaluation of the three anti-discrimination laws³⁷ was conducted. Pursuant to two royal decrees,³⁸ a commission of 12 experts was mandated to evaluate the three laws. Its mandate covers the period from 2016 to 2021. In accordance with the recommendations of the European Commission against Racism and Intolerance (Council of Europe), the commission of experts, in its interim report, did not confine itself to the legislation but also evaluated the application and effectiveness of the three laws. Its interim report of February 2017 contains recommendations for increasing the effectiveness of the legislation and improving efforts to monitor its implementation, in particular by the social inspection services and the legislative branch. The report is still under discussion in

the federal Parliament, but some departments are specifically considering whether its recommendations are attainable and how to give effect to them.

33. With reference to the police force, the legal and regulatory framework and the code of ethics governing police action provide a number of safeguards. These include the prohibition of engaging in investigations, arbitrary detentions, police searches or questioning, based on a person's physical appearance, skin colour or racial or ethnic origin. In addition, several oversight mechanisms have been set up (the police force, the Standing Committee for Police Monitoring, or Committee P, the Inspectorate General of the Federal and Local Police and the judicial authorities). Lastly, the training of police officers serves as an important further measure for combating racism and discrimination.

34. Regarding hate crimes, the Act of 14 January 2013³⁹ provides for increasing not only the minimum penalty⁴⁰ but also the maximum penalty for the offences of homicide and intentional bodily harm with a discriminatory motive (art. 405 quater of the Criminal Code).

35. In 2001, in Durban, Belgium pledged to develop a national action plan against racism. It confirmed that pledge in the Federal Resolution of 2 July 2015 on the introduction of targeted checks for discrimination in the workplace and during its second universal periodic review.⁴¹ In order to prepare the Inter-federal Plan to Combat Racism, a study financed by the federal Government was conducted by Ghent University.⁴² The study sets forth specific policy recommendations intended to serve as a basis for political negotiations on the Plan. In early 2017, an initial consultation was held with a small number of civil society representatives, resulting in 11 specific proposals, and there are plans to hold another, broader consultation with civil society. According to the policy note and statement issued by the Secretary of State for Equality of Opportunity, the goal is to work on the recommendations of the study and the proposals of civil society, and to combine the policy measures of the federated and federal entities into a priorities plan. Specific pledges will be requested from the ministers concerned.

36. With respect to statistics on racism and *xénophobia*⁴³ (see annex 5), 5,120 cases were registered in the period from 2010 to 2016. Of these, 4,775 correspond to prevention of racism and 171 to prevention of xenophobia.⁴⁴ Of the 5,120 cases registered, nearly 4,088 were discontinued.⁴⁵ A total of 216 cases resulted in a first instance judgement and a conviction rate of 78.4 percent:⁴⁸ 25 deferred sentences, 169 convictions and 12 acquittals. In total, 194 final convictions were handed down between 2010 and 2016.

37. Included in the annex is a non-exhaustive list of examples of convictions for racial discrimination or discrimination on the grounds of religion, anti-Semitism/Holocaust denial,⁴⁶ incitement to racial and/or religious hatred and offences of a racist nature, including assault.⁴⁷

38. In 2017, Unia registered 6,602 reports of potential discrimination, hate messages and hate crimes, which resulted in 1,907 cases (see annex 7).⁴⁹ The front-ranking sectors are the media (especially incitement to hatred on the Internet), labour and employment, and goods and services. In 2016, there was a spike in reports of anti-Semitism and Holocaust denial, with 109 incidents reported to Unia. Approximately one third of these concern statements posted on the Internet, especially on social media. The number of reports of verbal attacks or threats, or vandalism/damage to buildings and synagogues, has stabilized or even declined. Reports of Holocaust denial, on the other hand, continue to grow. Acts of physical violence still remain small in number, with the tragic exception of the killings at the Jewish Museum of Belgium in May 2014. Similar to the situation in 2015, approximately 90 per cent of the cases opened by Unia that are related to religious or philosophical beliefs (390) concern Islam. Some 40 per cent concern potential offences of incitement to hatred in the media and 23 per cent in the employment sector (cases involving the wearing of headscarves or workplace harassment, and, since the shootings, withdrawals of authorizations in security firms). The figures for the goods and services sector have increased since 2015. In 2016, Unia opened 18 cases relating to Roma/Travellers: one third relate to goods and services – in particular, to differential rates for communal services, and 22 per cent to remarks inciting hatred against such persons.

39. Racial discrimination and inequality can take various forms. In the housing and employment sectors, there are very marked differences in the situations of individuals,

depending on their nationality. According to the Diversity Barometer Housing (Unia, 2015), nationals of countries outside the European Union of 27 member States account for the highest percentage of persons living below the at-risk-of-poverty threshold⁵¹ and the highest percentage of tenants. Their scores/indicators of housing quality are lower, they show a rate of overcrowding that is 10 times higher than that of Belgians⁵² and they have higher housing cost overburden rates.⁵³ In Belgium, the unemployment rate for persons between the ages of 18 and 60 years was 8.5 per cent in 2012. This rate is lower (5.9 per cent) for persons of Belgian origin. It most closely matches the rate for persons from the European Union of 12 member States (6.6 per cent). Persons from a European Union candidate country or from a Maghreb country have the highest rates (23 per cent and 25.5 per cent, respectively). Individuals from another African country, another European country or a country in the Near or Middle East also have high rates (21 per cent, 18.1 per cent and 17.6 per cent, respectively). Finally, people from a country of the European Union of 14 member States, a Central or South American country or another Asian country also have unemployment rates that are higher than average for Belgium,⁵⁴ standing at 12.7 per cent, 12.7 per cent and 10.4 per cent, respectively.

40. The Act of 1 January 2017 on the service voucher introduced a system of graduated sanctions, which was already in place in the area of private employment. It provides for both administrative and criminal sanctions, making it possible to take action within a short time frame. On 17 March 2017, the representative organizations of employers of this sector and the Minister of Employment signed an anti-discrimination action plan for the service voucher system. On 28 October 2015, a resolution had already been adopted on raising awareness about, preventing and monitoring labour market discrimination against people of immigrant origin. Some of these issues are included in the Action Plan for Combating Work-related Discrimination, which was updated in mid-2016.

Replies to the issues raised in paragraph 7

41. The prohibition of incitement to hatred is a statutory limitation on the freedom of expression and is set forth in three federal laws: (1) the Anti-Racism Act (art. 20);⁵⁵ (2) the Anti-Discrimination Act (art. 22);⁵⁶ and (3) the law to prevent Holocaust denial.⁵⁷ The verb “to incite” covers all verbal and non-verbal communication (including on the Internet) that incites, stimulates, stokes, encourages, fuels, provokes, urges or prompts hate reactions in other persons. It encompasses more than just ideas, criticism or information. The incident must occur in public, in the presence of, or directed by two or more persons. In addition, the anti-racism and anti-discrimination laws require the element of specific intent: incitement to hatred is an act by means of which a perpetrator seeks to influence and elicit a reaction from an intended audience. The objective sought is for a person from the audience to be encouraged to engage in an act of hatred. However, it is not necessary for the incitement to actually result in a response.

42. During its second universal periodic review,⁵⁸ the Belgian State reiterated its position that, given the importance it attaches to the freedom of association, it does not consider it either appropriate or effective to adopt a law banning organizations that incite hatred and spread racist propaganda. Its current legislative arsenal already enables it to take effective action in this area. Organizations that have legal personality may be prosecuted on the basis of the above-mentioned article 20 and, where applicable, sentenced to criminal fines, but they cannot be ordered to disband, even though that is often what happens in practice. De facto organizations or associations, which are involved in the majority of cases, may be denounced only through their members, who may be prosecuted on the basis of articles 20 and/or 22 and, where applicable, sentenced to a fine or to a term of imprisonment. The majority of convictions (see annex) are handed down on the basis of article 20,⁵⁹ which defines a more general and ordinary offence, rather than articles 21 and 22, which define more specific offences.⁶⁰

43. In response to the Committee’s request, there are no statistics on incitement to nationalist, racial or religious hatred, since those of the Belgian College of Prosecutors General mentioned previously refer to the general categories of racism and xenophobia, without specifying the type of offence committed. It is important to note that the aforementioned circular No. COL 13/2013 pays particular attention to cyberhate.^{60 bis}

Efforts are under way to supplement the criminal legislation on negationist behaviour. Mention was also made previously⁶¹ of the measures taken – in the context of anti-terrorism efforts – to counter hate preachers and to close down websites promoting violent radicalization.

44. In terms of awareness-raising, there are plans to organize a federal anti-racism campaign that condemns stereotypes through the use of posters and social media and focuses on recognizing and combating racial prejudices. The campaign will be aimed at encouraging people to take a proactive stance in favour of diversity with a view to achieving social inclusion. In keeping with a Council of Europe movement, a Flemish platform entitled “No Hate Speech”, to which more than 80 organizations⁶² are connected, has been created. An action plan for the period 2016–2018 was launched through the platform. Its chairmanship and secretariat are provided by the Knowledge Centre for Digital and Media Literacy (Mediawijsheid).

45. The Brussels-Capital Region also fights discrimination and racism by launching a call for project proposals. Particular attention is paid to combating incitement to hatred and hate crimes and the promotion of a positive image of cultural diversity and intercultural dialogue. The aim of its “Racism, Game Over” project, which is organized by the three trade union organizations, is to raise anti-racism awareness in the workplace; it includes a study session for all delegates, a survey on the practice of racism, training courses, a round table for trade union representatives and a communications campaign conducted through several channels.⁶³ The French Community provides support for training and awareness-raising initiatives to prevent hatred and racist propaganda, in particular the No Hate Speech Youth Campaign of the Council of Europe. A new budget line was created in 2016, with the specific objective of combating racism (€164,000). In 2017, the French Community organized a public awareness campaign in conjunction with civil society on racist prejudices and stereotypes. It also organized a civics course for primary and secondary school students that was designed to teach them critical thinking, in particular with regard to these issues. Lastly, since 2015, work has been carried out on a project to prevent radicalism/extremism that leads to violence, and a response network was launched in January 2017.

Replies to the issues raised in paragraph 8

46. Belgium adopted the Act of 1 June 2011,⁶⁴ which prohibits the wearing in public places of any clothing that entirely or almost entirely covers a person’s face. In 2012, the Constitutional Court rejected appeals against this Act⁶⁵ on the basis of three arguments: the wearing of a full-face veil is an obstacle to women’s rights to equality and dignity, but more fundamentally, wearing any clothing that entirely or almost entirely conceals a person’s face poses security issues and undermines the conditions for living together (*le vivre-ensemble*) because it makes it impossible to identify the person. Although it is true that this law may place more constraints on certain Muslim women in exercising some of their freedoms, the restriction is not considered to be out of proportion to the law’s objectives and meets the criterion of being necessary in a democratic society. It is therefore reasonable not to prescribe differential treatment for these persons with regard to the obligation of every citizen to move about in public with an uncovered face. Lastly, the Act does not apply to places of worship, nor to accessories or clothing covering the face that are necessary for security or health reasons. In its judgment in the Case of *S.A.S. v. France* [GC] (2014), the European Court of Human Rights upheld the French legislation, which is very similar to that of Belgium.⁶⁶ Our country intervened as a third party in this case. With regard to the penalties prescribed by the Belgian law, offenders may be sentenced to a fine of €15 to €25 and a term of imprisonment of 1 to 7 days (to our knowledge, no sentence of imprisonment has ever been handed down in such cases). The law prescribes the lightest penalty, which prosecutors may waive by referring such cases to the relevant municipality – which is what usually happens – for the imposition of an administrative fine, thereby resulting in a lighter penalty. Criminal and administrative fines are not the only possible responses: article 4 (2) of the Act of 24 June 2013 on municipal administrative sanctions also makes provision for community service and local mediation.

47. In Belgium, there is no legislation that prohibits the wearing of religious symbols in schools. Each educational establishment must therefore decide whether to authorize or to prohibit this through their internal rules and regulations. The same holds true for the German-speaking Community. For its part, the French Community also leaves it to the discretion of each school administration to determine whether or not to impose this ban, in keeping with each school's particular characteristics and environment. According to its Decree of 31 March 1994 on the neutrality of education: "The freedom to manifest one's religion or beliefs shall not be subject to any restrictions except those necessary to protect human rights, the reputation of others, national security, public order, public health or morals, and compliance with the internal rules and regulations of the institution." Similarly, the principles of the freedom of religion and the freedom of opinion are in force in the Flemish schools. However, the majority of them have adopted restrictive measures over the past 10 to 15 years. In 2009, the GO! Community Education (Gemeenschapsonderwijs) Network (which is responsible for organizing the formal education system and is one of the three educational networks of the Flemish Community, the other two being the subsidized public network and the subsidized free network) decided, as a matter of principle, to impose a general ban on the wearing of headscarves, in compliance with the duty of schools to maintain neutrality. Lastly, the Council of State does not exclude the possibility of a general measure or of a measure emanating from a level higher than the schools, but only if it is aimed at resolving a problem at that level and if the need for it is justified on the basis of verifiable facts.

48. As to the specific measures adopted to promote freedom of religion, three principles govern the issues of religion and secularism: non-discrimination and equality;⁶⁷ the freedom of worship and the freedom to express one's opinions;⁶⁸ and the independence of religions and philosophical movements with regard to the State.⁶⁹ Some religions may be recognized by the State for historical reasons (the Roman Catholic, Protestant and Jewish religions) or based on decisional criteria (Anglican, Islamic and Orthodox religions). There are thus, to date, six recognized religions in Belgium. In an effort to promote religious tolerance, an application is being prepared for recognizing Buddhism as a philosophy. A subsidy has already been granted to the Buddhist Union of Belgium since 2008 for the organization of Buddhism in Belgium.

49. The recognition of a religion is always obtained through federal law⁷⁰ and requires the federal authority to perform the following duties: subsidize the salaries and pensions of religious ministers;⁷¹ grant public law status to the administrations responsible for managing the real and movable property necessary to the exercise of the religion concerned; and provide administrative supervision of their accounting records and non-religious operations.⁷² The federal authority also subsidizes the salaries and pensions of the delegates of organizations recognized by law as offering spiritual assistance according to a set of non-denominational philosophical tenets.⁷³ Non-recognized religions may be set up as non-profit organizations. Finally, an information and advice centre and a unit to coordinate action against harmful sectarian organizations have been established.

50. At the end of 2015, the Federal Police adopted a new policy on respect for diversity, one of the main components of which is training and awareness-raising for staff at all levels, in particular with regard to anti-racism and anti-discrimination legislation. As a result, in 2016,⁷⁴ approximately 350 of its senior officials completed the core modules of this training and will be able to participate in further training in the future. Several of these courses on diversity are provided by, or in conjunction with, Unia and have been since as far back as 1996, under agreements concluded between Unia and the Police (the most recent dates from 1 January 2013 and is open-ended in duration). Lastly, numerous awareness-raising activities are organized by the Police on the subject of diversity through various means of communication.

51. The Decree of 7 June 2013 regarding the Flemish policy on integration and civic integration calls for an inclusive policy in which all areas are covered/dealt with by the Commission on Integration Policy.⁷⁵ In addition to a horizontal component, this policy includes a vertical component: specific integration, the monitoring and study of target groups and specific initiatives. The multi-year Flemish Integration Pact Project that was launched in January 2017, and its measures are designed to combat racism and

discrimination in all areas of society. The project is implemented through the Minorities Forum, which represents ethnocultural associations in Flanders and in Brussels that bring together civil society organizations seeking to combat racism. The Flemish Region adopted the Decree of 8 May 2002 on proportional participation in the labour market.⁷⁶ The Flemish Community supports organizations either structurally or by subsidizing integration projects. In 2017, a survey was launched on the subjects of coexistence and diversity. The Flemish Decree of 28 June 2002 on equality of opportunity in education is aimed at offering the best opportunities to all children and young persons, while avoiding exclusion, segregation and social discrimination, and paying special attention to disadvantaged children. Following a round table on diversity in the youth and socio-educational organization sectors (2016), a number of activities were carried out (for example, the celebration of Diversity Day). Lastly, an extensive anti-discrimination awareness-raising campaign was launched in 2017 on the indirect expression of prejudice, which is often deep-seated and has an enormous impact on victims. This campaign covers all grounds for discrimination and all citizens. In early 2018, on Diversity Day, the Flemish Minister for Youth and various partners in the youth sector signed a master plan on diversity in youth employment for the period 2018–2020.

52. From 20 November 2017 to 17 December 2017, the Brussels-Capital Region organized an event entitled “Fortnight against Racism and Discrimination”. Subsidies were granted to nine projects of Brussels-based associations on a variety of subjects, including prevention, racism in companies, cyberbullying, etc. This call for project proposals was accompanied by a regional awareness-raising campaign entitled “Say no to racism” that ran in November and December 2017.⁷⁷ In view of its diversity and complexity and the recent attacks it suffered, the Brussels-Capital Region attaches great importance to inter-religious and inter-philosophical dialogue. One example of this was its launch of the magazine *GLIMP* in an effort to give voice to nine religions and philosophies with followers in Brussels.⁷⁸ The social cohesion service of the French Community Commission for Brussels supports projects intended to ensure equality of opportunity and conditions, and economic, social and cultural well-being, to every individual or group, so as to enable everyone to participate actively in society and to be recognized as part of that society. This process is intended, in particular, to fight all forms of discrimination and social exclusion by developing policies on social integration, intercultural relations, sociocultural diversity and coexistence among local communities.

53. On 19 December 2014, the French Community adopted a cross-cutting plan of action on combating racism and discrimination (with a five-year duration). The measures of the plan are subject to annual monitoring and to an evaluation at the end of the term of legislature. Since 2015, the French Community has organized an annual project application appeal to the non-profit sector and the local authorities for educational and cultural action to promote citizenship and intercultural understanding. The areas of intercultural dialogue, diversity and minority expression are considered priorities for the grant of subsidies. In addition, training programmes on convictional diversity are being provided for various sectors. After their evaluation in late 2017, these programmes will be extended to the front-line services of the French Community. Lastly, the Decree of 25 January 2017 provides for the establishment of an institute for the promotion of Islamic studies, which is intended primarily for imams and religious instructors.

Replies to the issues raised in paragraph 9

54. The following information relates to recommendations concerning the requirement in the Flemish region to speak or learn Dutch in order to access certain municipal services, the right of appeal against decisions of the municipal authorities (CCPR/C/BEL/CO/5, para. 10) and the complaints lodged in this area.

55. In exercise of their local autonomy, some municipalities in the Flemish Region impose linguistic conditions on the purchase of municipal land for the purpose of home construction. The Flemish government acts as the oversight body of the local authorities, in accordance with the legal requirements (municipal decree) for such transactions. Where appropriate, an application for annulment can be lodged with the government of the Flemish Region. Furthermore, an application for suspension or for annulment of the Flemish government’s decisions regarding oversight of the local authorities can be brought

before the Council of State.⁷⁹ By and large, over the past few years, there have been very few complaints relating to the language requirements imposed by municipalities, and the Flemish government has held in each case that the regulations were not inconsistent with linguistic freedom. On 4 October 2017, the European Commission decided to take no further action on a case concerning language requirements imposed by certain municipalities for the purchase of municipal lands.

56. With regard to access to social housing, learning the language was a prerequisite for registration and approval under the previous Flemish regional decree: the prospective tenant had to demonstrate willingness to learn Dutch. The Constitutional Court twice considered this condition of willingness to learn the language⁸⁰ and concluded that the condition was consistent with fundamental rights, provided that the following conditions were met. First of all, any sanctions for refusing to learn Dutch or to follow the civic integration process had to be in proportion to the harm or damage caused by such a refusal, and secondly, the termination of the lease had to be guaranteed and justified by means of a prior court inspection. Moreover, the sanctions were to be interpreted as not applying to prospective tenants or to tenants of social housing located in municipalities on the periphery of the Region or in municipalities on the language border, and who intended to make use of linguistic facilities.

57. Since 1 November 2017,⁸¹ the requirement for registration and approval in relation to the language learning provision has been removed and replaced with the tenant's obligation to possess (minimal) language skills in Dutch, corresponding to level A1 of the Common European Framework of Reference for modern foreign languages. The requirement explicitly stipulates that this must not impair access to language facilities by tenants of a social housing unit located in a municipality situated on the periphery of the Brussels-Capital Region or on the language border.

58. Henceforth, failure to meet the requirement to speak the language can no longer result in the termination of a lease for breach of contract⁸² but merely in an administrative fine imposed by the inspector.

59. An administrative appeal against the imposition of sanctions is organized through the housing inspector. It is also possible to lodge a judicial appeal before the first instance court.

60. There are no language requirements for being elected as a municipal councillor. In the Flemish Region, it is necessary to know Dutch in order to hold local political office. Article 44 (6) of the Flemish Municipal Decree stipulates that, without prejudice to article 72 bis of the new municipal law, all persons exercising the office of, or acting as, mayor, lay judge or chair of a municipal council must know the language used for administrative purposes, which is required for discharging their duties. They are elected or appointed on the assumption that they know that language. However, this assumption may be challenged at the request of a municipal councillor on the basis of reliable evidence, the office holder's own admission or else the manner in which the office holder discharges his or her mandate.

61. Pursuant to the law on the use of languages for administrative purposes, Dutch is, in principle, the only language used between the administration and individuals residing in Flanders, although the use of French or other languages may be permitted in certain circumstances.⁸³

62. In order to receive certain social benefits, public social assistance centres are required to serve any person residing in the municipality in which the centre is located and who meets the conditions for assistance. The aforementioned law on the use of languages for administrative purposes also applies to relations between the municipal services and their users.

63. Currently, there are no plans in Belgium to set up a body competent to deal with discrimination on the basis of language. However, the independent national human rights institution that will be established (paragraph 4) should, in order to comply with the Paris Principles, have a broad human rights mandate and should therefore be able to perform all the activities not yet being carried out by existing bodies. However, out of respect for the independence of the future institution, the Belgian State cannot make any pronouncements

concerning that institution's activities or the strategic choices to which it will assign priority in the future.

64. Incitement to discrimination and discrimination in employment and in access to goods and services on the basis of language and religion are prohibited. The Act of 10 May 2007 on combating certain forms of discrimination prohibits discrimination on those two grounds, among others.⁸⁴ It prohibits the following: direct and indirect discrimination and harassment (art. 21); incitement to hatred, violence or discrimination (art. 22); and discrimination on the part of public servants (art. 23). As is the case with the anti-racism and gender laws, the anti-discrimination law covers all areas of public life (public and private sectors):⁸⁵ access to goods and services, the hotel and catering industry, employment, social security, health care and participation in any economic, social, cultural or political activity that is open to the public. The Act prohibits direct discrimination, unless the direct distinction is made with objective and reasonable justification.⁸⁶ Persons guilty of discrimination – including on grounds of language or religion – are punishable under the criminal law. The civil law provides for the possibility of awarding victims statutory damages. The law also provides for halting the discrimination through the initiation of a civil action. Lastly, it provides protection for victims and witnesses of acts of discrimination.

Replies to the issues raised in paragraph 10

65. Laws in the French and Flemish communities and the federal State have been amended to equate discrimination on the basis of gender expression and gender identity with discrimination on the basis of sex.⁸⁷ These grounds are also included in the Walloon Region's Decree of 6 November 2008 on combating certain forms of discrimination, but the draft decree has not progressed beyond its adoption on first reading on 29 March 2018. These two grounds have also been incorporated into the revised legislation on the prevention of psychosocial risks in the workplace.⁸⁸

66. Regarding measures taken to punish acts of discrimination on the grounds of gender identity and sexual orientation, reference is made to the information provided above concerning the grounds of language and religion. Sexual orientation is one of the prohibited grounds of discrimination under the Act of 10 May 2007 on combating certain forms of discrimination, whereas discrimination on the basis of gender identity is – since 2014 – prohibited by the Act of 10 May 2007 on combating discrimination between women and men (this is the gender law whose provisions are similar to those of the anti-discrimination law). As far as remedies are concerned, victims can file a police complaint or report an incident to Unia (on the ground of sexual orientation) or to the Institute for the Equality of Women and Men (on the grounds of gender reassignment, gender identity or gender expression). These bodies provide information on specific topics⁸⁹ through their work with grass-roots associations, examine victims' complaints and, in certain circumstances, can decide to bring cases before the court. Recently, a gender division was established in the Office of the Ombudsman of Flanders in order to deal with complaints related to gender, gender identity or gender expression.

67. In terms of prevention, the current Government has undertaken to update the Inter-federal Action Plan to Combat Homophobic and Transphobic Discrimination 2013–2014 and the Inter-federal Action Plan to Combat Homophobic and Transphobic Violence by combining them, in the future, into a single inter-federal action plan to combat homophobia and transphobia. The evaluation of the two plans has resulted in amendments to legislation, better information, improved coordination among the services concerned and increased visibility of the problem. Lastly, in line with recommendation no. 20 of the Report on Belgium (2013) of the European Commission against Racism and Intolerance (ECRI), a general attitude survey of the population will be conducted on issues relating to lesbian, gay, bisexual, transgender and intersex (LGBTI) persons. The Flemish Community funds the salaries of two full-time teachers who provide free training and guidance programmes to educational staff⁹⁰ wishing to institute policies that are gender-sensitive and favourable to homosexual and transsexual persons.

68. An amendment to the Act of 10 May 2007 on transsexuality that provides for the removal of medical stipulations was adopted by Parliament on 24 May 2017. It pays

particular attention to the impact of gender reassignment on filial relationship and to the right to privacy when issuing official copies or extracts of civil status records. This procedure is also open to minors, who may change their first name as of the age of 12 years and change their registered sex as of age 16. The purpose of the new law is to base the procedure for a name or sex change on the principle of self-determination, in accordance with Resolution 2048 of the Council of Europe, the Yogyakarta Principles and the case law of the European Court of Human Rights.⁹¹

Non-discrimination and violence against women (arts. 2, 3, 7 and 26)

Replies to the issues raised in paragraph 11

69. Eliminating discrimination against women is the subject of many policies and laws at all levels of government in Belgium.⁹² Closing the male-female wage gap has been one of the top priorities of policymakers and the social partners for several years. The goal of the Act of 22 April 2012⁹³ is to make this discrepancy visible and a permanent theme of social dialogue at all three levels of negotiation (cross-industry, sectoral and corporate). In 2013 and 2014, various decrees on the implementation of this Act were adopted.⁹⁴ A system has been set up to verify job classifications from the gender perspective, and the social partners are in the process of being mobilized. A task force composed of representatives of the various services concerned monitors the implementation of the Act. According to the 2017 annual report on the wage gap in Belgium,⁹⁵ on average, women earn 7.6 per cent less per hour than their male counterparts (and 16 per cent less at the European level).

70. Belgium has taken various steps to increase women's participation in decision-making. The 2002 laws providing for parity in electoral lists have made it possible to increase women's representation in parliamentary assemblies, which rose to more than 40 per cent following the 2014 elections (all parliaments included). Laws aimed at balancing the representation of men and women in the public administration, in advisory bodies and in certain public management and administration bodies have also been modified or adopted at various levels of government since 2010, and their implementation is kept under review.⁹⁶ In 2015 and 2016, the non-profit sector carried out an awareness-raising campaign and a pilot project in the French Community with the aim of promoting gender equality and gender diversity in four areas: decision-making, human resources management, the activities of associations and communications. A 2011 law⁹⁷ (private sector) imposes a quota according to which at least one third of all members of the board of directors must be of the less represented sex. The penalties prescribed for non-compliance are annulment of the appointment or suspension of financial benefits. A second review of the law attested to its positive impact: the percentage of women on boards of directors increased from an average of 8.2 per cent in 2008 to 21.6 per cent in 2016.

71. The Communities have continued their efforts to combat gender stereotypes, including in the areas of education^{97 bis} and the media,^{97 ter} which has helped to reduce segregation among students in choosing an academic or vocational path. In the Flemish Community, the Genderklik Project has, since 2010, been aimed at increasing public awareness regarding the concept of gender.⁹⁸ In late 2017, a campaign on discrimination at work was launched.⁹⁹

Reply to the issues raised in paragraph 12

72. Belgium is steadfastly pursuing its goal of eliminating gender-based violence, and many initiatives have been undertaken in response to successive national action plans.¹⁰⁰ In late 2015, Belgium adopted a new National Action Plan on Combating All Forms of Gender-based Violence for the period 2015–2019.¹⁰¹ Through this Plan, which relies on cooperation between the Regions, the Communities and the federal State, Belgium has undertaken to implement more than 235 measures based on six broad-ranging objectives: (1) to pursue an integrated policy on combating gender-based violence and to collect quantitative and qualitative data on all forms of violence; (2) to prevent violence; (3) to protect and support victims; (4) to investigate and prosecute, and to adopt protection measures; (5) to take gender into account in asylum and migration policies; and (6) to take

action against violence at the international level. A report on the implementation of the Plan, reflecting the progress achieved since its adoption, was prepared in mid-2018. Domestic and sexual violence were also included among the priorities of the National Security Plan 2016–2019 and the Framework Note on Comprehensive Security 2016–2019.

73. Measures to improve the legislative and regulatory framework, raise awareness among the general public or targeted segments, and train professionals¹⁰² have been introduced, including the following measures relating to sexual violence:

- A feasibility study on the establishment of multidisciplinary care centres for sexual assault victims and the launch of three pilot projects in late 2017, whose performance is to be evaluated with a view to their broader implementation at a later date;¹⁰³
- A website bringing together all relevant information for victims and those in their immediate circle (mid-2016);¹⁰⁴
- A free, professionally staffed, French-language helpline (0800/98.100) (late 2016);
- The Flemish Community’s 1712 helpline, where callers can request advice, ask questions or seek referrals;¹⁰⁵
- The “Desire for love” (*Envie d’amour*) event, which is organized by the Agency for a Quality Life (AVIQ)¹⁰⁶ every two years;¹⁰⁷
- A website with information on abusive sexual behaviour, for volunteers and professionals working in various sectors;¹⁰⁸
- The relaunch of an awareness-raising/training programme on sexual violence and intimate partner violence, for hospital staff;
- Workshops on sexual violence for police and judicial personnel in 2015 and 2016 (approximately 1,000 participants) and dissemination of a sex offences manual to all police districts; and
- On the subject of paedophilia, in 2017, the introduction in Flanders of the “Stop it now!” project on the prevention of child sexual abuse, which relies on information campaigns and on helpline counselling and support.

74. Improving the availability and accessibility of shelters for victims of violence is also among the undertakings of the National Action Plan 2015–2019: attention is drawn to the recent information provided to the Committee on the Elimination of Discrimination against Women.¹⁰⁹ In addition, in 2017, the number of approved, specialized shelters for women victims of conjugal violence increased from 15 to 19 in the Walloon Region, while the French Community Commission increased the number of approved spaces for women accompanied by children and granted approval to a new reception centre at a secret location for women victims of conjugal violence, whether or not accompanied by children.

75. Regarding the practice of female genital mutilation, despite its criminalization¹¹⁰ and the assignment of a separate code to it in the databank of the Belgian College of Prosecutors General, very few cases have been registered: 20 from 2009 to 2016. To date, no case has ever resulted in a conviction. It is important to emphasize that combating female genital mutilation is a long-term project involving various departments at every stage.^{110 bis} The fact that proceedings have been initiated in several cases since 2012 suggests that the concerted efforts and awareness-raising activities are having an effect. The aforementioned article 409, which penalizes anyone practising, facilitating or abetting any form of female genital mutilation, with or without the consent of the victim, was amended in 2014, and now also penalizes anyone promoting or advertising the practice.

76. The Act of 2 June 2013¹¹¹ increased the penalties for forced marriage¹¹² and fictitious marriage,¹¹³ and defined forced legal cohabitation¹¹⁴ and fictitious legal cohabitation¹¹⁵ as criminal offences. When delivering a criminal conviction, the judge may annul a marriage or legal cohabitation.¹¹⁶ The registration officer is granted a time allotment for checking the validity of the documents submitted. The registrar may refuse to perform a marriage if, when considered jointly, the circumstances¹¹⁷ are such that they amount to a

fictitious or forced marriage. Such marriages can also be annulled after the fact, as can forced or fictitious legal cohabitation.

77. Various initiatives put forward by the non-profit and governmental sectors^{117 bis} were supported by the authorities at all levels of government. A guide to good practices, intended to strengthen prevention and the protection of girls and women who have been or are at risk of becoming victims of excision, was prepared for professionals. A photo exhibit entitled “32 ways to say no to excision” and consisting of 32 portraits of courageous men and women in Europe and Africa was shown in numerous public spaces. A European online knowledge platform on female genital mutilation, which was funded by the European Union, was launched in early 2017. A study on the interests of the child in the context of protective and punitive procedures related to female genital mutilation was funded by the French Community, the Walloon Region and the French Community Commission, and was disseminated throughout the country (French-speaking part). A guide for professionals on the subject of forced marriages was published in order to offer them advice in the area of victim response. A number of public awareness activities were carried out, including the “Men Speak Out” campaign,¹¹⁸ which was designed to involve men in combating female genital mutilation, and the organization of awareness-raising and training sessions in caring for excised women in hospitals (2015 and 2016). The results of a new study on the estimated prevalence of female genital mutilation in Belgium were published in early 2018.¹¹⁹ Finally, the operation of the two centres offering coordinated and multidisciplinary medical/psychosocial supportive treatment for the after-effects of female genital mutilation was extended to February 2019.

78. On the subject of honour-related violence, in early 2014, the Belgian College of Prosecutors General set up a multidisciplinary working group to prepare a circular and a training programme. The circular, which entered into force on 1 July 2017,¹²⁰ addresses honour-related violence, including forced marriage and female genital mutilation. It sets out guidelines for police officers and prosecutors, and facilitates the adoption of a joint police and judicial approach.^{120 bis} A one-day seminar held in mid-2017¹²¹ was used to inform the various stakeholders (judicial personnel, police officers, support staff) about the circular with a view to its implementation and dissemination. Training courses designed specifically for police officers and prosecutors were also organized in 2017 and 2018.

79. Belgium reiterated its position at its second universal periodic review¹²² that it would be unwise to enact a separate law to criminalize all acts of violence against women, given that there are numerous existing statutes that already define the various forms of possible violence as offences (see annex 8). Thus, a separate law would necessarily be limited, whereas several definitions of offences fitting the conduct in question and accompanied by aggravating circumstances appear to be more effective in bringing more closely targeted prosecutions.¹²³

80. In July 2016, a practical online tool for assessing the risk of intimate partner violence was introduced by the federal Government.¹²⁴ Public awareness campaigns¹²⁵ were organized, and through them, information was conveyed concerning the helplines¹²⁸ (para. 23). In mid-2016, a pamphlet on the rights of migrant victims of domestic violence was disseminated, primarily through the prosecuting authorities, the police force and the assistance/integration services. A study on the prevalence of violence against women in Brussels was launched in late 2015. The findings of the study will be released in mid-2018.¹²⁹ Another study, whose objective was to develop a code for reporting intimate partner violence or suspicions of such violence, was carried out for professionals, who were provided with tools, such as the prevention kit for female genital mutilation. Further to these efforts, three codes for reporting incidents of female genital mutilation, intimate partner violence and sexual violence were introduced in early 2018. The aim of these codes, which have been validated by the Physicians Association, is to inform health-care providers of the steps that they can take in situations of concern. The first Family Justice Centre was established in mid-2016 in Antwerp. (Its charter was signed by all the competent services and authorities.) In 2016 and 2017, the federal Government supported several new projects that take a “chain” approach in complex cases of domestic violence.¹³⁰ Largely as a result of these subsidies, there are now five Family Justice Centres in Belgium. Seven other cities have also introduced the chain approach. In Flanders, coordination is organized between the

social welfare, law enforcement and justice sectors for cases of domestic violence and child abuse that involve complex and multiple-risk situations. Wherever necessary, this coordination is carried out in a Family Justice Centre.

81. The collection of statistical data on gender-based violence is one of the priority objectives of the National Action Plan 2015–2019. Accordingly, the institutions concerned have undertaken to collect gender statistics and to submit them to the Institute for the Equality of Women and Men, which, in its capacity as coordinator of the Plan, is responsible for compiling them. Currently, the main national police database allows users to sort data on the basis of several criteria but does not produce reliable figures on victims (except missing persons) and their sex, even though this possibility is provided for in the Act of 18 March 2014 on police information management. Efforts – in particular, technical ones – are being carried out as a matter of priority in order to provide for such disaggregation, but the latter will apply only to future cases. To date, the only data on the sex of the victim that have been registered de facto are those on female genital mutilation, given that the sex of the victim is an inherent component of the offence. Included in the annex are statistics (registered cases and convictions) on the following forms of violence: (1) intimate partner violence; (2) sex offences (including rape); (3) female genital mutilation; and (4) forced marriage.

82. As to the question of amending the Criminal Code in order to characterize sexual abuse as an “offence against the person” rather than as an “offence against public morality and family order” (Part VII), this is currently being considered in the framework of the reform of the Code. It is worth pointing out, however, that the fact that sexual violence is covered in Part VII of the Criminal Code does not affect the priority given to the prosecution of such offences or to the public perception of them. Moreover, carrying out such a legislative amendment would not be easy, since it would require changing many laws that refer to these articles and renumbering them. Lastly, the fact that the Criminal Code does not have a section entitled “Sexual violence” does not prevent Belgium from creating new offences to deal with emerging phenomena (for example, to protect children from cyberpredators).^{130 bis}

Prohibition of torture and of cruel, inhuman or degrading treatment or punishment, security of person and treatment of prisoners (art. 7)

Replies to the issues raised in paragraph 13

83. The legal definition of torture contained in article 417 bis of the Belgian Criminal Code has not been amended. As far as this issue is concerned, Belgium maintains the position that was outlined in its previous reports.¹³¹

84. The definition set forth in article 417 bis incorporates all the constituent elements of the offence of torture enumerated in the Convention. Belgian law provides for the punishment of acts of ill-treatment in all cases, irrespective of the identity (public or private officer) or motive of the perpetrator, the co-principal or the accomplice.

85. A more severe penalty is imposed if the torture is committed by a public officer or a public official, a depositary or a law enforcement officer acting in the line of duty, since possessing one of these attributes constitutes an aggravating circumstance under Belgian law.¹³²

86. In the case of acts of torture committed by a third person at the instigation of or with the consent or acquiescence of a public official, Belgian law allows for lodging proceedings against both the third person¹³³ and the public official.^{133 bis}

87. Despite the fact that, under Belgian law, discriminatory motivation is not a constituent element of the offence of torture or of inhuman or degrading treatment or punishment, such motivation may be taken into consideration by the judge, who can decide to impose a more severe penalty within the penalty range prescribed by law. Moreover, discriminatory motivation is an aggravating factor in the punishment of offences related to ill-treatment, such as assault and battery,¹³⁴ failure to render assistance¹³⁵ and unlawful detention.¹³⁶ In addition, a general reflection process on the reform of the Criminal Code is

currently under way. Against this background, consideration is being given to the advisability of amending article 417 bis of the Criminal Code along the lines of the recommendations made by the United Nations treaty bodies.

88. The above-mentioned provisions must be considered in conjunction with one another. Together, they provide a level of protection that is higher than that required by the Convention. To amend article 417 bis of the Belgian Criminal Code along the lines indicated by the Committee would be equivalent to backtracking, which would be regrettable.

89. The practice of torture is strictly prohibited under Belgian law. This prohibition derives not only from international instruments with direct effect in the domestic legal order^{136 bis} but also from articles 417 bis and 417 ter of the Criminal Code, which define the offence of torture. The last paragraph of article 417 ter provides that neither superior orders nor necessity can serve as justification for the offence of torture.

90. This gives rise to the absolute prohibition of the use of evidence obtained through torture or inhuman treatment. Both the academic literature¹³⁷ and case law¹³⁸ are unanimous in this regard. Indeed, evidence obtained in this manner fulfils two of the three criteria for the exclusion of unlawful evidence that are laid down in article 32 of Part I of the Code of Criminal Procedure: the use of such evidence is manifestly contrary to the right to a fair trial, and the commission of such an irregularity automatically taints its reliability.

91. The principle of non-refoulement is an absolute principle and one that is always taken into account by the Belgian authorities when considering a case involving removal or extradition.

92. The concept of “safe third country”, as referred to in article 38 of Directive 2013/32/EU, was transposed into Belgian law pursuant to the Act of 21 November 2017, during the reform of the aforementioned Act of 15 December 1980.¹³⁹ However, this concept has never been applied in practice.

93. Under article 74/17 of the Act of 15 December 1980,¹⁴⁰ the expulsion of foreigners residing without authorization may be temporarily postponed if the removal/expulsion decision exposes them to a breach of the principle of non-refoulement. If the Commissioner General for Refugees and Stateless Persons delivers an opinion¹⁴¹ indicating that there is a risk of a serious violation of human rights under the articles pertaining to refugee status¹⁴² or subsidiary protection,¹⁴³ expulsion can take place only pursuant to a reasoned and detailed decision by the minister or his representative indicating that the opinion is no longer valid. In addition, the Council for Alien Law Litigation oversees expulsion decisions. When, as a matter of extreme urgency, a foreigner makes an application¹⁴⁴ to the Council’s president, the latter closely reviews all the evidence before him or her, especially evidence that might indicate the risk of a violation of human rights, including the prohibition of torture and inhuman or degrading treatment. In view of these requirements, diplomatic assurances are never used to expel a foreigner who is residing in Belgium without authorization.

94. Article 2 bis of the Act of 15 March 1874 on extradition provides that an extradition cannot be granted if there are serious risks that the person concerned would be subjected, in the requesting State, to a flagrant denial of justice, to torture or to inhuman or degrading treatment. In the event of doubt concerning the respect for human rights in the destination country, its authorities may be contacted, possibly leading to a request that they provide explanations and/or written pledges. To date, such assurances remain exceptional and are not intended to override the principle of non-refoulement but rather to obtain accurate and up-to-date information on the existence of a genuine risk in the requesting State. In some cases, they make it possible to know the specific rules of law that will be applied to an individual. Moreover, there is nothing to prevent follow-up monitoring (such as by a liaison judge or law officer in the requesting State who can monitor the situation of the extradited person). In addition, as part of recognition proceedings, respect for human rights is ensured through an automatic review by the pretrial chamber and the indictments chamber, possibly giving rise to a review on appeal. In addition, ministerial orders for extradition may be suspended or revoked by the Council of State.^{145 bis} Finally, if it is not possible to extradite an individual, the authorities may bring proceedings against him or her in keeping with the

principle of *aut dedere aut judicare* or, in the case of a prior conviction, they may enforce, in Belgium, any sentence handed down.

Replies to the issues raised in paragraph 14

95. Statistics relating to ill-treatment by police officers^{145 ter} are set out in three tables in the annex: (1) complaints regarding such acts submitted directly to Committee P; (2) judicial inquiries conducted by the Police Investigation Service into such acts;¹⁴⁵ and (3) criminal convictions of police officers for such acts,¹⁴⁶ some examples of which are provided in the annex.¹⁴⁷

96. As part of its analysis of the judgments and rulings sent to it under article 14 (1) of the Organic Act of 18 July 1991, Committee P engages each year in an in-depth review on a particular theme. In 2012,¹⁴⁸ it focused on court decisions sent to it between 2009 and 2012 concerning police violence, which accounted for 91 out of 693 decisions. The decisions concerned 168 police officers (142 inspectors), of whom 45 were disciplined (nearly 27 per cent). It was concluded that there was sufficient evidence of police violence in 39 of the 91 cases. Of these, a deferred sentence was handed down in 23 cases, a totally suspended prison sentence in 5 cases, a partially suspended prison sentence in 6 cases, a six-month prison sentence (criminal record) in 1 case, a sentence of community service in 1 case and a guilty verdict (violation of reasonable time limit) in 3 cases.

97. The individual investigations department of the Inspectorate General of the Federal and Local Police processed 104 case files relating to allegations of police violence in 2016.^{148 bis} These figures represent 13 per cent of the cases dealt with by the Inspectorate General and do not include the aforementioned cases, which were initiated or processed by Committee P or by the internal control services of the police districts and the Federal Police.

98. With regard to disciplinary sanctions (light¹⁴⁹ and heavy without¹⁵⁰ or with¹⁵¹ expulsion from the police force) against police officers for ill-treatment of detainees,^{151 bis} attention is drawn to the Police Disciplinary Board (2012—2016) table contained in the annex.

99. Criminal proceedings (art. 29, Code of Criminal Procedure) and/or disciplinary proceedings¹⁵² may be brought against prison staff suspected of having perpetrated acts of violence or ill-treatment against detainees. Criminal complaints (lodged by victims and, in some cases, filed by the Federal Public Service for Justice) relating to statutory civil servants have the effect of suspending any disciplinary procedures. Examples of disciplinary sanctions that have been handed down (since 2009) against prison staff for physical and psychological abuse of detainees are included in the annex.

100. Finally, it is worth noting the decision of the Court of Cassation of 24 March 2015,¹⁵³ which rejected the appeal of a 26 June 2014 decision of the Brussels Appeal Court¹⁵⁴ on the following grounds:

- Pursuant to article 3 of the European Convention on Human Rights, if a person is a victim of violence while in custody or in detention, there is a strong factual presumption of responsibility on the part of the authorities – thus, in the absence of a plausible explanation, the offence is deemed to be established. According to the Court of Cassation, it does not follow that the judge must recognize the victims' statements as credible and reject those of the suspects; in fact, the Appeal Court indicated why it found the statements (defendants, plaintiff, other arrested persons and other witnesses, including neutral police officers) plausible or implausible, following a careful examination and confrontation of these individuals;
- The State's procedural obligation to conduct an effective official investigation, also pursuant to article 3 of the European Convention on Human Rights, is a best efforts obligation, not an obligation to achieve a result; the Appeal Court found the investigation to be exhaustive, given that all official measures needed to establish the facts had been carried out and that there were no further measures that could reasonably be imposed to identify the detectives who had transported the plaintiff to the hospital;

- The right to a fair trial, which is protected under article 6 (1) of the European Convention on Human Rights and article 14 (1) of the Covenant, does not require judges to respond in detail to each argument – it suffices for them to state the reasons for their decision so that the party claiming damages can understand it.

101. With regard to measures taken to ensure the prompt investigation of complaints against police officers, the prosecution of those responsible, the punishment of the perpetrators and information on the procedures established to ensure the transparency and autonomy of the system for dealing with such complaints, reference is made to the detailed explanations provided to the Committee against Torture in November 2014¹⁵⁵ concerning the police monitoring and oversight mechanism.¹⁵⁶ With regard to the criticism of the independence of the Committee P's experts and its Police Investigation Service, it should be recalled that "Belgium has an effective monitoring body, the Committee P, which is an independent committee under the authority of Parliament, and this provides all necessary guarantees of the independence, effectiveness and objectivity of monitoring. The independence, neutrality and impartiality of investigations conducted by the Committee P investigating service, or of the members of that service, have never been called into question."¹⁵⁷

Security of person and treatment of prisoners (arts. 7, 9 and 10)

Replies to the issues raised in paragraph 15

102. Internees are individuals who have been tried for perpetrating or attempting to perpetrate an act defined as an offence but who are not held responsible for it because they have a mental disorder. They are not sentenced to a penalty but are instead subject to a protection measure whose purpose is to protect society and at the same time ensure that they are provided with the proper care for their condition so that they can be reintegrated into society. In some cases, internees may be kept in secure facilities when they are considered to pose a danger.

103. Internee case management is currently undergoing a major reform¹⁵⁸ based on the concept of the programme of care (*trajet de soins*), whereby internees are placed in and transferred from one case management system to another (non-custodial secure facilities, open facilities or facilities offering only day reception), depending on the status of their mental condition.¹⁵⁹

104. The two forensic psychiatry centres – one in Ghent (262 places) and one in Antwerp (180 places) – are fully operational. They accommodate internees in conditions that simultaneously combine a high degree of security with a level of care that is equivalent to that of a psychiatric hospital. The centres are managed by private entities; they do not employ prison staff and are not prisons.

105. There are plans to build three new forensic psychiatry centres: one in Aalst (120 places, long-term stays), one in Paifve (250 places, to replace the current social protection facility) and one in Wavre (250 places). Their project specifications are in the process of being drafted.

106. At the same time, the reception capacity of traditional care facilities has been increased (210 places in Flanders, and 80 places in Brussels and in the Walloon Region). These places are for targeted groups (sex offenders, psychotic individuals or persons suffering from Korsakov's syndrome).

107. The Act of 2014 on internment, as amended by the Act of 4 May 2016, embodies the care trajectory concept and provides for a number of major changes: (1) it redefines the criteria for internment, limiting the type of offences to attacks against, or threats to, the physical and mental integrity of third parties; (2) it facilitates the determination of the initial diagnosis; (3) it replaces the social protection commissions with permanent social protection boards that have exclusive authority to supervise internees' cases;^{159 bis} and (4) it specifies the types of institutions where internees may be placed.

108. Regarding the implementation of the Act, the social protection boards are operational, and two administrative orders on victims' rights and one on the specific

components of the electronic monitoring/limited detention programme have been adopted.¹⁶⁰ Other executory decisions are being prepared, including a royal decree on a model forensic psychiatry expert's report (art. 5) and an administrative order to determine the non-medical costs of placement in an external facility (art. 84). The opening of an observatory (arts. 6 and 136 (1)) is planned for 2020. Lastly, a number of agreements on placement (art. 3(5)) are to be concluded between the parties.

109. The federated entities with competence over mental health have also adopted policies that are in keeping with the care trajectory concept.

110. Several more years will be required to implement this ambitious reform. Nevertheless, it is already showing significant results: in 2013, there were 1,139 internees in prison facilities,^{160 bis} whereas in April 2018, that figure was 543.

111. Prisoners not being held as internees are also entitled to mental health care. Such prisoners are seen within the first 24 hours of their admission by a general practitioner, who refers them to a psychiatrist if they have psychiatric problems or have been a patient in a psychiatric hospital. They are entitled at all times to consult the general practitioner and the nurses of the medical service. Whenever necessary, the general practitioner refers them to the psychiatrist. Prison staff may also call the medical service if they notice strange or inexplicable behaviour in a prisoner. Additionally, the psychosocial services and the Communities can provide support. In the Flemish prisons, for example, inmates with psychological or psychiatric problems can receive support at their own request.

112. The gradual reduction of internees in prisons has a positive effect on other inmates with psychiatric problems, since the allotted resources can gradually be redirected towards those inmates. Lastly, as part of the Master Plan III, the Paifves facility will become a conventional detention centre, but will retain its staff. It will therefore have valuable experience in attending to prisoners who are not internees but who suffer from a mental disorder.

Replies to the issues raised in paragraph 16

113. In the exercise of their official duties, police officers may be required to use force, doing so in strict compliance with the terms contained in the relevant national and international normative frameworks. Their use of Taser/electro-muscular disruption devices must therefore be consistent with these basic principles. The legal and regulatory framework that authorizes police officers to employ force, including through the use of weapons (such as Tasers), has not been amended.¹⁶¹ Belgium has taken the necessary steps to limit the purchase, carrying and use of Tasers. Only certain police units are legally authorized to use them. Moreover, the use of Tasers is subject to authorization by the Minister of the Interior, which is conditional on submission of a detailed and reasoned application and the possession of a specific licence obtained following special training in which police officers are taught to use this weapon and to provide assistance to victims. The cardiovascular risks associated with the repeated use of Tasers have been evaluated, and training in the use of Tasers, as well as in intervention techniques in the field, have been adapted to mitigate these risks in practice.

Replies to the issues raised in paragraph 17

114. Statistics disaggregated on the basis of ethnic origin or age group are not available. As at 29 March 2018, the prison population of Belgium totalled 10,406 inmates; of these, 4,013 were prisoners awaiting trial, 5,690 were convicted prisoners, 541 were internees and 172 were other types of prisoners.¹⁶²

115. In the last few years, Belgium has actively begun tackling the problem of prison overcrowding and improving conditions of detention. Various measures have been taken to reduce the prison population, increase prison capacity, replace dilapidated prisons and encourage the use of alternatives to detention.

116. The Master Plans¹⁶³ address two needs – increasing prison capacity and improving conditions of detention. In order to meet these needs, they take into account four key factors which ensure that detention is carried out in humane conditions: the construction of new

prisons, the expansion of existing prisons, prison refurbishment and the development of policies regarding alternatives to detention.^{163 bis}

117. All planned facilities are designed in accordance with modern prison standards. Close attention is paid to the quality of life within the facility (ventilation, lighting, materials, etc.). Each cell is equipped with a telephone or perhaps even a digital platform and has a separate sanitary unit (toilet, sink and shower) in order to ensure optimal conditions of detention. These aspects are also taken into account when refurbishing or expanding existing structures.

118. In addition, three new prisons (Beveren, Leuze-en-Hainaut and Marche-en-Famenne), each with 312 places, have been built. Several refurbishment or expansion projects have also been carried out or are in progress. A renovated wing with 79 places will be placed into use in the coming months. It should nevertheless be noted that Belgium has also terminated the lease of the Tilburg prison in the Netherlands and has partially closed the Merksplas and Forest prisons for reasons of building security, which has led to the loss of approximately 1,000 places.¹⁶⁴

119. In terms of reducing prison overcrowding, several initiatives have also been taken. Through closer collaboration with the Immigration Office, there has been a significant increase in the number of expulsions of convicted foreigners residing without authorization in Belgium. Steps have been taken to facilitate the use of electronic monitoring for persons carrying out a short-term sentence, bringing the total number of convicted persons serving their sentence under electronic surveillance to 1,700.

120. Persons in pretrial detention and persons serving prison sentences are subject to differing prison regimes and are kept in separate wings, or separate facilities altogether. This general rule may be waived at the express request of the person being held in pretrial detention.¹⁶⁵ If deprived of their liberty – which is ordered only as a last resort – minors who have committed an act characterized as an offence are placed in a public youth protection institution (*Gemeenschapsinstelling*), which are under the authority of the Communities. Referral orders may be issued, on an exceptional basis, for young people between the ages of 16 and 18 years of age.¹⁶⁶ They are placed in a public youth protection institution or in a detention centre. In the event they are sentenced to a principal or supplementary penalty of imprisonment, they serve their sentence in a correctional wing. There are three circumstances in which they may nevertheless be placed in an adult prison: (1) they are 18 years old or older, and there are not enough places at a public youth protection institution at the time of their placement or subsequent to it; (2) they are 18 years old or older and are causing serious problems or are endangering the safety of other young people or staff members; and (3) they are 23 years old or older.

121. The complete elimination of inter-prisoner violence is probably unrealistic, but an effort is made in prisons to limit this risk by taking practical steps to improve relations between prisoners.^{166 bis} Detention regimes that are more open have also been introduced in some prisons, which may have an impact on the general atmosphere within those institutions.

122. With regard to access to health care and its quality, the above-mentioned Dupont law is founded on the principle of equivalence of care (art. 88), whereby prisoners have the right to a standard of health care that is equivalent to that available outside of prison. In practice (see para. 15), prisoners are seen within 24 hours of their arrival by a general practitioner whom they can consult anytime (or they can consult nurses), and who can refer them, if necessary, to a specialist.

123. Furthermore, negotiations are under way to transfer a portion of the responsibilities for health care, including psychiatric care, from the Federal Public Service for Justice to that for Health, the aim being to offer more facilities with a view to ensuring inmates access to such care. In this regard, a report referred to as the “KCE report”¹⁶⁷ outlined a series of findings and areas for improvement. The results of the KCE study were disseminated to all parties concerned.^{167 bis} The Federal Public Service for Health, in cooperation with that for Justice, has worked on setting up working groups to address the following topics:

- Organization of first-line care

- Organization of second-line care
- Organization of dentistry
- Pharmacology
- Mental health care
- Problems of addiction
- Coordination and management services at the level of the central governments concerned

124. These working groups, composed of representatives of the Federal Public Services for Health and for Justice and, where necessary, the National Institute for Health and Disability Insurance and the Communities, have begun their work.

125. Measures have been taken to promote alternatives to detention. As far as pretrial detention is concerned, in addition to conditional release or release on bail, the Act of 27 December 2012 allows judges and the investigating courts the possibility, at any time, to decide to enforce electronic monitoring.¹⁶⁸ Also worth noting is the Act of 23 March 2017 on mutual recognition between States of decisions concerning the use of control measures as an alternative to pretrial detention.¹⁶⁹ With regard to penalties, in addition to the penalty of community service,¹⁷⁰ two new autonomous penalties have been created: placement under electronic monitoring and probation as a separate penalty.¹⁷¹ The Act of 2 February 2016 amended the Act of 29 June 1964 on deferral, suspension and probation, in order to bring it into line with the new penalties, by excluding the possibility of granting a suspended alternative sentence and relaxing the rule concerning the defendant's criminal record, which means that a sentence whose enforcement may be suspended on probation cannot be granted to a person who has already been sentenced to a prison term of more than 3 years (previously 12 months). By increasing the possibilities for trial judges to impose a penalty other than imprisonment, these new options pave the way for a reduction in the use of detention. Other initiatives are under way to reduce the use of pretrial detention (conditions for its application and length) and the granting of short prison terms. A new Sentence Enforcement Code, as well as a new Criminal Code with revised penalties and penalty categories, are currently being drafted.

126. The total prison population decreased from 11,854 inmates in April 2014 to 10,406 inmates in March 2018, resulting in a decrease of more than 1,800 prisoners in four years. The aim is to reduce it to fewer than 10,000 prisoners, while at the same time further increasing prison capacity, in accordance with the new Master Plan (see annex 15). The prison overcrowding rate has declined from nearly 25 per cent in June 2013 to 12 per cent in March 2018.

127. The Coalition Agreement of October 2014 provides for the introduction of guaranteed service during prison strikes in order to safeguard the fundamental rights of inmates. In 2017, a public statement on this issue was made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. The Government plans to introduce a legislative initiative that is also aimed at increasing the level of qualified staff in prisons. There are plans to introduce legislative initiatives for improving the effectiveness of prison organization and prison staff, which will allow for the proper execution of pretrial detention measures and prison sentences by ensuring a better match between the recruitment of staff members and the needs of the facility.

128. Efforts to bring about the full entry into force of legislation known as the "Principles Act"¹⁷² continue to be made. The prison oversight bodies (Central Supervisory Council/local commissions), which were previously under the supervision of the Federal Public Service for Justice, will be transferred to Parliament in order to strengthen their independence.¹⁷³ This is an essential step in the entry into force of the articles of the law concerning the right of complaint. The aim is to strengthen the effectiveness of these bodies (which are composed of citizens). The process for handling complaints will be changed in order to make it more flexible. In the meantime, these bodies continue to exercise their original responsibilities.¹⁷⁴ In order to accomplish the transfer of responsibilities, legislative amendments and a royal decree are under discussion and are expected to be adopted in the

near future. The provisions relating to the Central Supervisory Council and those relating to the supervisory commissions are being dealt with through the legislative process currently under way.

Prohibition of slavery and servitude (art. 8)

Replies to the issues raised in paragraph 18

129. Since 2005, article 433 quinquies of the Criminal Code penalizes trafficking in human beings. The definition of this offence in Belgium is broader than that contained in international instruments since, irrespective of the age of the victim, it does not require evidence of the use of a *modus operandi* as a constituent element of the offence.¹⁷⁵ In addition, its broad interpretation of the expression “for the purposes of economic exploitation”¹⁷⁶ has the effect of making forced labour a punishable offence.

130. In recent years, various measures have been taken to step up the fight against trafficking in human beings. Three laws were adopted in 2013: the first, amending the Criminal Code, broadens the meaning of the expression “for the purposes of sexual exploitation”;¹⁷⁷ the second provides for the aggravation of the penalties, depending on the number of victims;¹⁷⁸ and the third calls for the confiscation of the real property used to perpetrate the offences of trafficking and the exploitation of the prostitution of others.¹⁷⁹ The Act of 31 May 2016¹⁸⁰ introduced a series of technical changes regarding the offence of trafficking in human beings: expansion of the list of aggravating circumstances to include all the means referred to in the European Union directive on trafficking in human beings; harsher penalties for perpetrators of human trafficking;¹⁸¹ inclusion of attempted human trafficking; extension of the statute of limitations to 18 years; and protection of the victims of trafficking for the purposes of sexual exploitation from public disclosure of their identity. The circular on the investigation and prosecution of offences related to trafficking in human beings was updated by circular No. COL 01/2015.^{181 bis} The latter recommends, *inter alia*, an increase in the use of financial inquiries (for the seizure and confiscation of the proceeds from crime) and special methods of investigation. It also places emphasis on the interests of victims, including in terms of identifying the income of which they have been deprived as a result of the exploitation. With regard to minors, the circular provides for mechanisms to ensure greater interaction between youth court prosecutors and judges who specialize in human trafficking and confirms the priority to be given to prosecuting persons who have exploited minors.

131. A third National Action Plan to Combat Human Trafficking 2015–2019, which was adopted on 15 July 2015,¹⁸² advances initiatives relating to criminal policy, victim protection and awareness-raising in the field. It recalls the guidelines for implementing the previous Plan (2012–2014) and introduces the role of the federated entities (prevention, public information and awareness-raising). This will open the door to increased efforts and the involvement of new actors. The Plan provides for strengthening cooperation among the Benelux countries, fine-tuning the rules on victim protection and continuing to improve the detection of child victims.

132. The Interdepartmental Coordination Unit for Combating Human Trafficking and Smuggling is charged with conducting an objective evaluation of the results obtained by the measures that have been adopted. For example, it evaluated the 2008 multidisciplinary circular on the protection of victims of human trafficking; in 2011, its evaluation focused on the mechanism as a whole, and, in 2013, on the situation of minors.

133. It has become apparent that there is a need to promote closer contact between judges specializing in human trafficking and those specializing in juvenile justice. Circular No. Col 01/2015 provides for the establishment of consultation mechanisms to that end.

134. The annex contains statistics on trafficking in human beings and aggravating factors for smuggling.

135. On the subjects of prevention, public information and training courses, many initiatives have been carried out, particularly in hospitals and in observation and referral centres for applicants for international protection.^{182 bis} The federated entities have begun to

pay greater attention to the issue of sexual exploitation. In 2017, a training programme organized for social workers/youth assistants in the French Community focused on the cases of sexually exploited minors, the exploitation of begging and the fact that some children are used to commit offences. Moreover, since 2017, the French Community has included a fact sheet on trafficking in human beings in its school violence manual. In early 2017, the Flemish Region funded a Child Focus website for the “Stop Procurers of Teenagers” campaign, which is directed at persons (whether among the general public or professionals) who come into contact with teenagers. The goal is to enable them to take preventive action or to report known or suspected cases of exploitation. Discussions are held in conjunction with the training initiative. An action plan to protect the victims of procurers of teenagers was launched in early 2016. Lastly, a monitoring group is conducting work in the areas of prevention, protection, prosecution and cooperation.

136. Judges receive alternating basic and specialized training, as needed, every one or two years, on the subject of trafficking in human beings. The human trafficking service of the Federal Police¹⁸² ter organizes regular training on the subjects of smuggling and trafficking in human beings. Informative materials are available through the police intranet. Training has been organized since 2012 for the staff of reception centres for applicants for international protection (particularly with a view to identifying minor victims), and training sessions are held at the Immigration Office. The Federal Public Service for Justice offers training to guardians of unaccompanied foreign minors in order to help them identify minors who are victims of human trafficking. Fact sheets are distributed. Training sessions are also organized for those carrying out social inspections, often in conjunction with the Police.

137. The three specialized reception centres for human trafficking victims are continuing their work. Since 2014, they have been formally integrated into the previously mentioned coordination unit. They offer victims administrative, legal and social services and provide them with medical and psychological care, and accommodation. The centres work towards reintegrating victims, particularly in terms of helping them find a job. They use the services that are available (for example, language learning or other training). Between 2010 and 2015, there were, on average, 150 new cases of victim assistance each year (see annex). In 2016, there were 133 new cases of victim assistance at the three reception centres. There appears to be a somewhat even distribution of victims of sexual exploitation and victims of economic exploitation (given that the latter is on the rise). With reference to minors, the Guardianship Act was expanded in 2014 and applies to Europeans who are unaccompanied foreign minors in vulnerable situations or potential victims of trafficking.¹⁸³

138. The aforementioned Act of 15 December 1980 and its implementing circulars provide for the issuance of residence permits to victims of trafficking, as well as the provision of administrative, legal and psychosocial support. Cooperation with the authorities remains a condition for access to the system after the recovery period (45 days) that is offered to victims. The procedure in Belgium is followed on a flexible, case-by-case basis, and at the end of the process (if the perpetrator is convicted or if the prosecuting authorities request conviction for trafficking), victims may be granted an indefinite duration residence permit. Finally, the Act of 30 March 2017¹⁸⁴ provided for the replacement of the order to leave the country after 45 days (start of the rehabilitation period) with a temporary residence permit. This is based on the outcome of an internal evaluation of the victim protection system and is consistent with a recommendation made by the Group of Experts on Action against Trafficking in Human Beings (GRETA) of the Council of Europe, since the order to leave the country is not perceived as a “positive” document for victims and may frustrate the efforts of front-line actors.

Protection against arbitrary arrest and security of person (arts. 2, 9 and 10)

Replies to the issues raised in paragraph 19

139. Among the measures taken to ensure that all persons deprived of their liberty are afforded the fundamental guarantees to which they are entitled, the right to have access to a

lawyer while being examined in the context of criminal proceedings¹⁸⁵ has been significantly expanded by the Act of 21 November 2016 (known as the “Salduz + Act”) on certain rights of persons required to submit to examination.¹⁸⁶

140. Its wording was drafted by a multidisciplinary working group¹⁸⁷ and was the subject of extensive consultations with practitioners in the field.¹⁸⁸ The findings of the *ex nunc* (in real time) scientific evaluation of the Act of 13 August 2011¹⁸⁹ were taken into account. Moreover, the implementation of the new Act must be accompanied, once again, by an *ex nunc* scientific evaluation, in collaboration with practitioners in the field,¹⁹⁰ and its final report is expected to be completed soon. The provisions on the right to medical assistance and the right to contact a third party concerning one’s deprivation of liberty, which are already contained in the Act of 13 August 2011, remain unchanged.

141. Article 47 bis of the Code of Criminal Procedure now forms the basis of all hearings in criminal matters. The new law extends the right to have access to a lawyer during the hearing¹⁹¹ to persons not deprived of their liberty who are suspected of having committed an offence punishable by a prison sentence. It also redefines the categories of persons subject to examination and the rights to which persons in each of those categories are entitled (see annex 17).

142. The law provides that the wording used to inform suspects of their rights must take into account the vulnerability and age of the person, which was something that had already been established in practice. Furthermore, the annotations in the summonses and the description of suspects’ rights before and during the hearing are communicated to them in advance by means of a letter of rights. The two pre-existing models – concerning deprivation and non-deprivation of liberty – were supplemented by a third model, which is intended for persons deprived of their liberty on the basis of a European arrest warrant¹⁹² or an alert.¹⁹³ These three model letters of rights have been updated and exist in 60 languages.¹⁹⁴

143. Suspects deprived of their liberty have the right to consult a lawyer without undue delay during the 48-hour time period following their deprivation of liberty and before their first hearing. Access to a lawyer is proactively organized by the investigating official (this has been the case since as far back as 2011). Article 495 of the Judicial Code is the legal basis that the on-call service relies on for finding a lawyer to assist suspects who need one. To that end, a web-based application is available to professionals (lawyers, judges, prosecutors and police officers). The Act also provides for the assistance of a lawyer at each hearing held during the 48-hour period following the deprivation of liberty. Accused persons enjoy the same rights as suspects deprived of their liberty if their hearing before the investigating judge is an initial hearing.

144. From the moment they are served with an arrest warrant, suspects held in pretrial detention have the right to consult a lawyer at any time and the right to be assisted by their lawyer during consecutive hearings (assistance proactively organized by the State).

145. In addition, the Act now provides that the lawyer may be present during confrontations and police line-ups/identification parades.

146. Suspects who are questioned on the basis of a summons but not deprived of their liberty must also be informed of their rights. In the event a summons is incomplete (does not contain a brief description of charges or rights), suspects can ask to postpone the questioning so as to exercise their right to consult with a lawyer. In late 2016, circular No. COL 8/2011 was revised as an accompaniment to the new law and contains, inter alia, model summonses to cover all situations. The “change of status” provision (pertaining to the case in which a person who is not a suspect is revealed to be one during the hearing) was retained, in accordance with the Directive.

147. Only adults may waive their right to be assisted by a lawyer during examination, which may, at that point, be audiovisually recorded. In addition, the investigator, the public prosecutor or the investigating judge may, at any time, decide *ex officio* to make an audiovisual recording.¹⁹⁵ Juvenile suspects, whether or not they have been deprived of their liberty, may never waive their right to have access to a lawyer, which is proactively organized by the investigating official. For the sake of clarity and transparency, the

formulation of temporary exceptions to the right to have access to a lawyer was adapted to the terms of the Directive mentioned previously.

148. The Salduz+ Act also incorporates into national law, for persons who are the subject of a hearing, Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings and Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime.¹⁹⁶ The procedure used for persons undergoing examination who do not speak or understand the language of the proceedings or who suffer from a hearing or speech disorder varies depending on their status as a subject in the hearing. If the assistance of an interpreter is provided, it must be noted in the court record. The Act provides that the costs of interpretation are to be borne by the State. It also provides that persons deprived of their liberty must be granted linguistic assistance, where necessary, to allow them to communicate basic information about the charges and engage in prior confidential consultation with their lawyer. Persons with hearing or speech disorders may also request to be assisted by the person most accustomed to communicating with them. Accused persons may, at the State's expense, obtain a translation of their arrest warrant. The law requires the translation of only those passages that describe the charges being brought and that are necessary for effectively exercising the right of defence. Such translations must be completed within a reasonable period of time and be useful in the context of the proceedings.

149. The police force has taken the necessary measures to apply this Act directly. The above-mentioned documents are used in practice. All police officers concerned were immediately informed of these developments through publications, internal memoranda and briefings, some of which were in conjunction with the judicial authorities. Police officer training has also been adapted to reflect these changes. Some police academies are in the process of developing an e-learning module on Salduz+. The observance of fundamental legal safeguards may also be verified by reviewing the custody record.¹⁹⁷

150. Pursuant to article 108 of the Principles Act,^{197 bis} body searches may be conducted to check whether a prisoner is in possession of any prohibited or dangerous substances or objects. The Act allows for requiring prisoners to remove their clothing in order to conduct a visual search of their body and its orifices and cavities.

151. Constitutional Court Order No. 143/2013 suspended article 108 (2) (1) of this Act,¹⁹⁸ with the result that body searches can no longer be conducted unless authorized by the director, in whose opinion there are indications that a pat-down search in that particular instance would be insufficient. Such body searches must be conducted in a closed space, not in the presence of other prisoners, and must be carried out by at least two members of the prison staff who are of the same sex as the prisoner. Clothing searches and body searches must not be conducted in a vexatious manner but rather must be carried out with respect for the dignity of the prisoner. In addition, prisoners may be subject to the search of their clothing whenever deemed necessary for the maintenance of public order or security. The conditions under which searches can be conducted are reproduced in the Joint Letter No.141 of 30 January 2017 (see annex 18).

152. The Act of 6 July 2016 amending the Judicial Code with regard to legal aid and its implementing orders¹⁹⁹ entered into force on 1 September 2016. The aim of the amendment is to enhance the quality of services, make the system more equitable and improve the entire legal aid process for beneficiaries and providers. It was launched in close consultation with the bar associations and civil society. The system has been made more equitable, since those in need have genuine access and those with adequate resources are excluded. This has resulted in a better assessment of the means of livelihood – and no longer of the income – of applicants for legal aid. All resources are taken into account.^{199 bis} Certain individuals (such as prisoners, applicants for international protection, beneficiaries of the social integration income benefit or of social assistance, etc.) enjoy a rebuttable presumption of insufficient means; minors enjoy an irrebuttable presumption of insufficient means. Means tests for the provision of entirely cost-free services are conducted without prejudice to international and/or national provisions that require the unconditional grant of completely cost-free legal aid or legal assistance.

153. A modest contribution is requested of persons who have recourse to the system for the appointment of counsel for each new proceeding.²⁰⁰ Exemptions are provided in order to avoid impeding the access to justice of certain individuals (minors, applicants for international protection, stateless persons, internees or mentally ill persons, who must defend themselves in a criminal proceeding and have received entirely cost-free legal aid, are involved in debt settlement procedures or have no means of livelihood). Legal aid offices exempt other beneficiaries from this contribution when it can be demonstrated that paying it would severely hamper their access to justice.

154. The budget for legal aid will be gradually and sustainably increased in the coming years in order to meet objectives such as the protection of applicants for international protection and compliance with the additional “Salduz” rules. The yearly general budget for second-line legal aid²⁰¹ has been increased by €20,403,552.80 and €918,000 for costs pertaining to the “Salduz” on-call service. The Act of 19 March 2017²⁰² established a budgetary fund for the provision of second-line legal aid, the proceeds of which are used to finance lawyers’ fees and the costs associated with the organization of legal aid offices. The fund is fed by a flat-rate contribution of €20 (payable in both civil and criminal matters), but is not applicable to beneficiaries of legal aid and judicial assistance. The Act of 26 April 2017²⁰³ established a similar fund with a contribution of €20 for cases brought before the Council of State and the Council of Alien Law Litigation.

155. At the time of the reform, the Judicial Code was amended with regard to judicial assistance (reimbursement of the costs of the proceedings) in order to meet the requirements of the judgment of the European Court of Human Rights in the case of *Anakomba Yula v. Belgium*.^{203 bis}

Refugees and asylum seekers (arts. 7, 9, 10, 12–14 and 24)

Replies to the issues raised in paragraph 20

156. Regarding applicants for international protection, reference is made to the report submitted by Belgium to the Committee against Torture.²⁰⁴ According to the Dublin procedure, such applicants may be detained for six weeks – the length of time (which is not extendable) needed to determine the State member of the European Union responsible for their application. If Belgium is not responsible for examining their application, applicants may be detained for the time strictly necessary to carry out the transfer (a maximum of six weeks) not including the previous detention for determining the Member State responsible.²⁰⁵ This Act was amended in late 2017 so as to bring it into line with Regulation (EU) No. 604/2013, even though the conditions for detention that were set forth in this regulation were already being met in practice. Accordingly, before anyone can be held in detention, he or she must be considered to pose “a significant risk of absconding”.²⁰⁶

157. With respect to conditions of detention, the Royal Decree of 8 May 2014²⁰⁷ introduced individual rooms to the existing group and custom arrangements.²⁰⁸ Its objective is to ensure the individualized supervision of residents who, as a result of their conduct, make living in a group difficult, if not impossible. In fact, closed facilities are faced with the difficulty of managing residents who cannot live in a normal group arrangement or who present behavioural problems.^{208 bis}

158. In 2015, residential block III of the Merksplas Centre was completely renovated in order to gradually abolish its large-scale communal living arrangement. The new facility consists of four units with rooms for four or five persons, instead of dormitories. The aim of this new concept is to give residents more privacy.

159. As to applicants for international protection whose application Belgium is responsible for examining, article 8 (3) of EU Directive 2013/33 lists five grounds for detention: (a) in order to determine or verify the applicant’s identity or nationality; (b) in order to determine those elements on which the application for international protection is based and which could not be obtained in the absence of detention, in particular when there is a risk of absconding of the applicant; (c) in order to decide, in the context of a procedure, on the applicant’s right to enter the territory; (d) when the applicant is detained subject to a

return procedure under Directive 2008/115/EC, in order to prepare the return and/or carry out the removal process, and when the Member State concerned can substantiate on the basis of objective criteria, such as the fact that the applicant already had the opportunity to access the asylum procedure, that there are reasonable grounds to believe that he or she is making the application for international protection merely in order to delay or frustrate the enforcement of the return decision; (e) when protection of national security or public order so requires.

160. Articles 74/5 (1) (2) and 74/6 (1) of the Act of 15 December 1980 set out several grounds for detaining applicants for international protection during the processing of their application. Only those grounds for detention that are consistent with the above-mentioned article 8 (3) are implemented in practice. This was also amended by the Act of 21 November 2017.

161. Two types of alternatives to detention for applicants for international protection were created for families with children: home supervision under contract with the authorities; and accommodation in individual “return houses” (*maisons de retour*).²⁰⁹ Families that are unlawfully resident in Belgium who can sustain themselves may reside at home, subject to certain conditions and to sanctions in the event of non-compliance.²¹⁰

162. Since 2009, families with children who are required to leave Belgium are no longer lodged in closed centres. Families unlawfully resident in Belgium who are subject to a removal decision and those refused entry at the border who have been notified that they are subject to a detention decision are lodged in return houses and receive the assistance of a counsellor.²¹¹ There are currently 28 such housing units distributed among five locations.

163. In order to improve judicial oversight of the detention of foreigners, several closed centres have, for several years, been providing additional front-line legal aid. In the Brugge centre, a weekly consultation with lawyers of the Legal Aid Commission enables residents not represented by counsel to request an opinion on their case, while requests for pro Deo lawyers are made through the centre’s social services team. In the Vottem centre, lawyers from the legal aid office organize two weekly front-line consultations during which persons seeking the services of a pro Deo lawyer must apply. The lawyer evaluates the suitability of the request and, where appropriate, takes the necessary steps through the office of the relevant bar association. In the other centres, a request for the assistance of a pro Deo lawyer is made through the social services team.

164. The Royal Decree of 7 October 2014²¹² provides that the proceedings before the Independent Complaints Commission are to be supplemented by an internal complaints procedure before the director of the centre or his or her deputy (art. 129). From 2014 to 2016, the Permanent Secretariat of the Commission received 75 complaints, many of which were of a practical or less serious nature.^{212 bis} Such complaints are always considered in the light of the Royal Decree of 2 August 2002²¹³ and the Ministerial Decree of 23 January 2009.²¹⁴ Only three of the complaints examined on the merits by the Commission could be linked to excessive violence/ill-treatment: (1) one complaint (placement in solitary confinement) was considered to be partially substantiated, but following appropriate action by the centre’s directorate, it was deemed irrelevant; (2) one complaint (placement in a separate room for a morning transfer, so as not to disturb the sleep of others) was considered to be partially substantiated, and the Royal Decree will be revised in favour of the residents; (3) one complaint (use of restraints, temporary placement in solitary confinement) was found to be unsubstantiated. The use of restraints and law enforcement measures proved to be indispensable in this particular case. The facts of the case were not contrary to any provision of the Royal Decree. Consequently, there are no complaints in which there are reasonable grounds to suspect that torture or inhuman or degrading treatment or punishment was perpetrated in the closed centre. Moreover, such acts would come under the jurisdiction of the judicial authorities, since the Commission’s mandate is the operation of the closed centres (see statistics in annex 19).²¹⁵

165. In 2017, 23 complaints were filed with the Complaints Commission by residents of the closed centres (13 were admissible).

Replies to the issues raised in paragraph 21

166. From 2010 to 2016, 19 complaints relating to expulsion were filed directly with Committee P.^{215 bis} The outcome of these complaints was as follows: 4 complaints were dismissed after investigation, owing to no finding of fault/irregularity; 12 complaints involved criminal offences; 1 complaint involved police conduct that was under judicial investigation and was referred to the prosecuting authorities for settlement/necessary action; 1 complaint was dismissed owing to the lack of jurisdiction *ratione materiae* of Committee P;²¹⁶ and 1 complaint was dismissed after investigation, owing to insufficient information to conclude that there had been any disproportionate use of force. Among the complaints that involved criminal offences, 9 were referred to the prosecuting authorities for settlement/required action; in the case of 2 that had been filed by a lawyer, Committee P referred the lawyer to the judicial authorities; and in the case of 1, which the complainant had already submitted to the prosecuting authorities, Committee P referred the complaint to the internal oversight service of the Federal Police for investigation and disposition. The judicial authorities informed Committee P that action taken in 8 of the 9 complaints had resulted in their dismissal.

167. From 2010 to 2016, the judicial authorities referred only one inquiry involving expulsion to the Police Investigation Service. As to convictions for acts of police violence during deportation operations, in compliance with article 14 (1) of the Organic Act of 18 July 1991, for the period 2010–2016, Committee P received a copy of an order dated 20 April 2012 issued by the Brussels Pretrial Chamber pursuant to a complaint with action for damages filed by several passengers of a flight to Cameroon on 26 April 2008, during which an incident had occurred involving a Cameroonian national who had been the subject of a failed forced repatriation. He died a few days later in the Merksplas secure facility, but the Pretrial Chamber issued a discharge of the police officers involved, based on its conclusion that the charges were unsubstantiated, owing to the lack of objective evidence of any excessive use of force.^{216 bis}

168. From 2012 to 2015, the Inspectorate General of the Federal and Local Police registered four complaints of forced return: one complaint in 2013 (proceedings initiated by the prosecuting authorities and investigation conducted by the Inspectorate's individual investigations department); two complaints in 2014 (one handled through administrative investigation and the other through investigation by the above-mentioned department); and one complaint in 2015 (referred to the internal oversight service of the Federal Police). The figures for 2016 have not yet been made public.

169. On the subject of restricting the use of force during deportation operations, the recommendations of several bodies, including the Vermeersch Commissions and the Inspectorate General of the Federal and Local Police, are now taken into account. Emphasis is placed on an effective and humane approach: policies and specific measures are adopted concerning procedures for the selection and training of support staff, communication with the deportee and on-board personnel, and the use of restraints. Prior to the preparation and execution of deportation operations, a risk analysis is carried out under the supervision of police administrators (in addition to the oversight provided by the Inspectorate General). A fresh analysis is undertaken after completion of an operation, and procedures/training may be adapted as a result. A specific procedure²¹⁷ has been developed for reporting or dealing with incidents that may arise. In addition to external oversight (Committee P, Inspectorate General and the judicial authorities), there is also internal oversight, notably in the form of the disciplinary procedure.²¹⁸ For the past seven years, a regular annual report of complaints and/or incidents potentially linked to expulsion has been submitted by the Police to the Inspectorate General. Given that no major incident has occurred in the course of an expulsion since 2008, it can be inferred that the training and briefings provided have been effective. It should be recalled that police officers are trained in the specific features of this assignment through an extensive practical module, including a real-life simulation, and are made more familiar with respect for human rights and for the vulnerability of foreigners subject to expulsion. As a result, they have developed genuine expertise in this area, enabling them to perform their duties in accordance with the Police Force Code of Ethics and with internal instructions. The establishment of the SEFOR service of the Immigration

Office (public awareness, processing and return) has resulted in an increase the number of voluntary returns. Failing these, forced returns are carried out.

170. In 2012,²¹⁹ the role of the Inspectorate General of the Federal and Local Police as an independent oversight body for the entire process of forced returns was confirmed, owing to the fact that: (1) it was already authorized to oversee them²²⁰ and had considerable experience in the area, and it can perform partial or full inspections and target different phases of the process;^{220 bis} and (2) it is independent of the authorities issuing the expulsion decisions (Immigration Office) or executing them (police units – Air Police Service at Brussels Airport – LPA BRUNAT). The Inspectorate General is directly answerable to the Minister for Home Affairs (day-to-day management) and the Minister for Justice (execution of judicial mandates). Its members are recruited from within local or federal police forces, but once transferred to the Inspectorate, they no longer belong to those forces and are sworn in by the Inspector General. Given the special nature of their duties, they retain their judicial/administrative powers. They have a general and permanent right of inspection. When an incident occurs, they can intervene directly to stop a crime and, if necessary, draw up an official report, which is something that a member of a non-governmental organization (NGO) cannot do (see below). Furthermore, no restrictions may be imposed on them. In particular, as regards access to sensitive areas of airports, including military airports, they encounter no problems with screening. Finally, they are required to observe professional privilege in order to ensure the confidentiality of the operations, especially prior to executing them.

171. From the organizational standpoint, the Inspectorate General of the Federal and Local Police reports to the Minister for Home Affairs. However, according to article 69 (7) of the Royal Decree of 20 July 2001, the Inspector General discharges his or her mandate in accordance with a letter of appointment issued by the Ministers for Home Affairs and Justice, thereby strengthening his or her independence. The members of the Inspectorate General do not wear a uniform. The Inspectorate decides independently, on the basis of its own risk analysis, when inspections are to be performed and, on the basis of its findings, draws up recommendations whose implementation it monitors. A chronological report that includes these recommendations is prepared for each inspection visit and is sent to the Minister for Home Affairs, the authority that issued the expulsion order and the police authorities concerned. Where appropriate, a report is forwarded to the judicial authorities. Each year, the Inspectorate General reports on its activities to the Minister for Home Affairs. A copy, with any comments, is subsequently sent to Parliament. External bodies are increasingly consulting the Inspectorate in order to benefit from its expertise in the area of forced returns. This demonstrates that the quality of its work and its strict adherence to such principles as integrity, impartiality and objectivity are being recognized. It also strengthens civil society's confidence in the Inspectorate General, which is a reflection of the Inspectorate's independence.

172. For the past three years, the number of members of the Inspectorate General who participate in inspections of forced returns has risen. As a result, the possibilities for carrying out inspections have increased. Based on the subsidies paid to the Asylum, Migration and Integration Fund (AMIF) of the European Union, in addition to the temporary assignment of a permanent member of the Federal Police, the Inspectorate General must allocate a minimum of 952 staff hours to inspections of forced returns. The minimum number of inspections is set at the following levels: 60 inspections at the time of boarding, 8 inspections through to final destination and, in principle, inspections of all "special flights" carrying deported persons. Judging from the annual reports of the Inspectorate General, these agreements have been respected, except for the inspections through to final destination in 2015 and 2016. The failure to attain the required minimums is due to the increase in the number of such flights, which are given priority. This point was discussed with the manager of the Asylum, Migration and Integration Fund.

173. Figures for the Inspectorate General's inspection of deportation operations (2012–2016) are as follows:²²¹ 515 inspections at the time of boarding; 50 inspections of regular flights through to destination; 36 inspections of special flights at time of boarding only; and 45 inspections of special flights through to destination.

174. Given the Inspectorate General's added capacity to monitor forced returns and its independence and autonomy in exercising its functions, the presence of NGOs does not appear to be necessary. With regard to the use of video recordings, the Belgian State still subscribes to the conclusions of the Vermeersch Commission II, as set forth in its final report of 31 January 2005, in which the Commission found such recordings to be ill-advised for several reasons, including technical and logistical ones. The Inspectorate General shares this view and considers that the use of video recordings would be onerous from the standpoint of both personnel and equipment, would undermine respect for the privacy of the other persons present, would capture only incomplete images of the persons recorded and would be difficult to implement.

Right to a fair trial (arts. 2, 14 and 26)

Replies to the issues raised in paragraph 22

175. The Belgian State's sixth reform transferred a large part of the authority for the protection of young people from the federal State to the Communities. This transfer actually took place on 1 July 2014. The use of referral orders now lies within the authority of the Communities, but so long as the Communities do not enact legislation in this area, the federal law remains applicable.²²²

176. A number of decisions were set forth in the Coalition Agreement of the Flemish Government 2014–2019. These will be reflected in a decree (being drafted). In particular, a decision was made to develop a new youth law that prescribes measures allowing for the gravity of the offence and the minor's level of maturity, while at the same time respecting the principle of proportionality. This decree is based on multidimensional and individualized responses to offences that place special emphasis on reparation: it provides for complementarity and harmonization between youth assistance and offender case management through the adoption of flexible approaches and public-private partnerships, together with quality standards and appropriate procedural safeguards for youth offenders. It maintains the possibility of referral orders for offenders who are at least 16 years of age but makes the conditions for doing so more stringent.²²³ Lastly, the De Grubbe youth institutes in Everberg and Tongeren (previously federal) are to be incorporated into the public youth protection institutions (Communities), while the population of the De Wijngaard detention centre in Tongeren (youth between the ages of 16 and 23 years who have been subject to a referral order) is also to be included in the Flemish bill.

177. The French Community Decree of 18 January 2018 containing the Code on Prevention and Youth Assistance and Protection provides that the youth court may relinquish jurisdiction (refer a minor to the criminal courts), but it makes the conditions for doing so more stringent in order to adhere more closely to the overall philosophy of youth protection by referring minors only in cases where such measures have been shown to be inadequate. The courts can therefore relinquish jurisdiction only if the minor has already been held for a prior offence under a closed regime in a public youth protection institution and is being prosecuted for a serious violent crime. Added to the offences covered by the above-mentioned Act of 8 April 1965 are serious violations of international humanitarian law and terrorist acts punishable by a term of imprisonment of at least 5 years. In addition, the irreversibility of referral orders has been revoked, given that the protective approach of the system is to assume that any offence committed by a young person, even if it has been subject to a referral order, deserves to be examined by a youth court in order to avoid, as far as possible, bringing to bear the force of the criminal law.

Rights of the child (arts. 7 and 24)

Replies to the issues raised in paragraph 23

178. Belgium takes a holistic approach to corporal punishment that encompasses prevention, penalization and family support and assistance. The Belgian State has, on numerous occasions, reiterated that several provisions under its civil and criminal law apply to corporal punishment: those defining the offences of bodily harm²²⁴ and/or degrading

treatment²²⁵ with aggravating circumstances if committed against a minor by his or her parents or any other person having authority over him or her;²²⁶ article 371 of the Civil Code;²²⁷ and article 22 bis of the Constitution.²²⁸

179. Discussions to bring Belgian civil legislation into line with article 17 of the European Social Charter²²⁹ are now under way. In fact, the prohibition of all forms of violence against children is consistent with developments in Belgian society and reflective of public opinion. The Committee of Ministers Resolution CM/ResChS(2015)12 of 17 June 2015²³⁰ functions as a stimulus for the bill. Belgium shares the view of the Committee on the Rights of the Child that the use of violence as a child disciplinary measure is unacceptable in any circumstances. The goal would be to convey to parents and children that there are alternatives to the use of violence for disciplinary purposes. This prohibition is directed towards persons who hold parental authority, as well as legal guardians and other persons responsible for the care and upbringing of a child.

180. The Communities are empowered to prevent violence against children and to organize public awareness campaigns.²³¹ In 1998, the French Community adopted a decree on assistance to victims of child abuse. Its government then chose a general-category civil servant to coordinate activities related to this decree.²³² A new decree was adopted in mid-2004. In mid-2013 an intersectoral collaboration protocol, aimed at organizing the prevention of child abuse, was concluded. After the protocol was in force for a year and had been evaluated, an order was issued to improve its efficiency and to orient it more clearly towards implementing the decree. The order of 23 November 2016 has the following dual objective: to clearly delineate the sphere of action of efforts to coordinate prevention with a view to developing a cross-cutting programme; and to merge the programmes (the YAPAKA cross-cutting programme and those of each administration) into a coordinated triennial plan on the prevention of child abuse.²³³ This plan of action, which was developed through an intersectoral platform, has two target audiences: (1) the public at large and children, for whom the actions are intended to prevent child abuse, provide information about assistance and prevention services, and facilitate access to them; and (2) practitioners in the field,^{233 bis} for whom the initiatives are intended to provide information, raise awareness, provide training in identifying signs of risk, contextual factors and symptoms of abuse, and publicize the service network that is available to deal with confirmed or suspected situations of abuse. The aim of the YAPAKA website is to prevent child abuse by stimulating thought in an effort to help parents, educators and teachers avoid such abuse. The “Ecoute Enfants” service, reachable by dialling the number 103, is a cost-free, anonymous helpline that is available every day from 10 a.m. to midnight for children and adolescents, and for adults dealing with young people in difficulty. At the other end of the line, a team of eight professionals – psychologists, social workers and crime experts – who are trained in hotline counselling are continually upgrading their skills in order to optimize the guidance they provide.

181. With regard to prevention and victim assistance in the Flemish Community, the public can dial telephone number 1712²³⁴ to request information, receive advice or be transferred (in cases of violence, abuse or harassment). The website at www.1712.be²³⁵ has a section for adults, one for children under the age of 13 years and one for those 13 years or older, with content and language adapted to the respective target audience (in keeping with the finding that the 1712 number was less well known among minors). A campaign has been launched to publicize the site. Posters have been distributed among children and young people in specific sectors, such as youth, culture, education and sport. This distribution is part of an ongoing process. Public awareness and information campaigns are carried out each year in order to make the 1712 number better known. Each campaign emphasizes a particular form of violence or and/or targets a particular audience. The 2016 campaign was aimed at children and young people and included posters in schools and in the youth and sport development sectors. In early 2016, a Flemish action plan for the promotion and protection of physical, psychological and sexual integrity of minors in the youth assistance, childcare, education, and sport and youth sectors was sent to the Flemish government; in it the ministers concerned undertake to prevent and eliminate violence against children. This plan has four components: (1) increasing and spreading knowledge; (2) supporting/raising awareness among the general public about protecting the physical/sexual/psychological integrity of minors; (3) identifying conduct that is

appropriate and adapted to this issue, inappropriate conduct and child abuse in the sectors concerned; and (4) providing the necessary support/assistance to victims of such acts. The plan is being implemented gradually through the working group on integrity. In 2016 and 2017, emphasis was placed on scientific research, the development of a programme of action on knowledge and the sharing of expertise in peer-support initiatives. As part of this plan of action, work was also conducted with a view to setting up information points under the authority of the sporting and youth organizations.

182. The Decree of 19 May 2008 on youth assistance in the German-speaking Community provided for the establishment of a steering committee – including all relevant services – that is charged with planning in the areas of youth assistance and prevention. During biannual youth assistance forums, collaboration with other sectors, such as education and justice, is organized around the themes of children at risk or child victims. After the most recent forum in 2017, a working group was established on the steps to take in responding to an emergency at school (cases of child abuse, etc.). The main objectives of the “Leuchtturm” (Lighthouse) working group, which was established in 2013, are prevention and increasing awareness among and educating professionals on the subject of sexual violence against minors through pamphlets and training sessions.^{235 bis}
